

1895-047 Chancery Causes: R. E. Litton vs. Ira Baker  
Lee Co.

Stout, Shuler, Rivers, Flarary, Munsey, Sewell

CA-Contract Dispute  
T-Property

-Deed



To the Honorable W. T. Miller,

Judge of the Circuit Court for Lee County, Virginia:-

Your orator, R. E. Litton, humbly complaining, sheweth unto the Court that by deed dated on the 23rd day of December, 1867, Flemming F. Shelton and Sarah J. Shelton his wife conveyed in fee simple to Joel S. Cox their undivided one seventh part in and to a certain tract of land situated in Lee County, Virginia that descended to the heirs of Jeremiah Skaggs, deceased, known and called the home tract of land of the said Jeremiah E. Skaggs, deceased. Said deed is recorded in the Clerk's office of the Lee County Court, in Deed Book No. 15, page 531. A copy of said deed is herewith filed marked exhibit "A", and prayed to be considered as part of this bill; That afterwards the said Joel S. Cox and Naomi his wife by deed dated on the 25th day of July, 1868, conveyed in fee simple to Dixon S. Litton their undivided one seventh part in and to said Home tract of land of the said Jeremiah Skaggs, deceased, which was conveyed to the said Cox and wife by the above deed; Said last deed is recorded in the Clerk's Office of the County Court for Lee County, Virginia in deed book No. 15, page 529; a copy of this deed is herewith filed marked exhibit "B" and prayed to be considered as part of this bill; That in April, 1868, the said Joel S. Cox filed his bill in equity in the County Court for Lee County, Virginia, against Jeremiah Skaggs' heirs et al to partition the lands of the said Jeremiah Skaggs, deceased, among his heirs and those entitled to said lands; that in said suit at the August Term of said Court, to-wit, on the 21st day of August, 1868, a decree was rendered directing <sup>the</sup> partition of said lands of the said Jer-



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emiah Skaggs, deceased, to be made amongst those entitled thereto, and appointed Carr Bailey, David Cox and John Reasor as commissioners to make said partition; that said commissioners performed the duties assigned them under said decree, and on the 19th day of October, 1868 filed their report of the same; that at the January Term of said Court, to-wit, on the 19th day of January, 1869, a decree was rendered by said Court duly confirming said report of partition and allotting and assigning the seven shares in said land to the seven parties entitled thereto. Said decree and commissioners report are recorded in the Clerk's office of the County Court for Lee County, Virginia, in deed book No. 15, p.p. 638 et. seq. Copies of the same are herewith filed, marked exhibit "C", and prayed to be considered as part of this bill, and copies of the whole of said partition suit will be filed herewith in due time, if necessary.

Your orator here states that by an ~~imperfect~~ inspection of the said exhibit "C" it will be seen that the interest of the said Flemming F. Shelton and wife in said land was laid off and assigned to the said Joel S. Cox for the benefit of Dixon S. Litton; that it is lot No. 1 in said partition, containing 20 acres more or less and is fully described in said report.

Your orator further states that afterwards the said Dixon S. Litton and Lavina, his wife, by deed dated on the 2nd day of September, 1868, conveyed in fee simple said lot of land No. 1 that had been so assigned to him in said partition, to-



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gether with other lands, to your orator; said deed is recorded in the Clerk's Office of the County Court for Lee County, Virginia in deed book No. 28, page 571; a copy of said deed is herewith filed marked exhibit "D", and prayed to be considered herewith; that afterwards the said Dixon S. Litton and Lavina his wife, by another deed dated on the 4th day of April, 1893, conveyed a right-of-way and water right to your orator in and to the spring where William Stout then lived, and for a full and satisfactory evidence of the same, reference was made to the commissioners' report in the partition of the estate of Jeremiah Skaggs, deceased. Said deed is recorded in the Clerk's office of the County Court for Lee County, Virginia, in deed book No. 28, page 574. A copy of said deed is herewith filed marked exhibit "E" and prayed to be considered herewith.

Your orator further states to the Court, that it will be seen from an inspection of said exhibit "C" that lot No. 4 was assigned to John Skaggs in said partition; that it contains 20 acres more or less, and is fully described in said commissioners' report; that lot No. 4 has been sold and conveyed until on the 17th day of October, 1893, it was conveyed by deed of said date by William L. Stout and wife to one Ira Baker, the present owner, who is in the actual possession of the same, holding the same under the title of said Jeremiah Skaggs as aforesaid; that by an inspection of said exhibit "C" it will be seen that the following provisions for use of water was made in said commissioner's report: "There being no spring water on lots No's. 1, 2, 3, & 6, the owners or tenants of said lots shall have the right and privilege to water as



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follows: The owner or tenants of lot No. 1 to use water from a spring on lot No. 4 where John Willis now lives."

Your orator further states that all the parties to said partition at once took possession of their respective shares under said partition; that the said Dixon S. Litton and his tenants, and your orator and his tenants, of said lot No. 1 have occupied the same ever since the date of said partition down to the present time; that during said time <sup>up</sup> to the early spring of 1894, for over a period of 25 years they have used water from said spring on lot No. 4 openly, notoriously and continuously without any interference from the owner of lot No. 4; that during all of said period of said time the owners of said lot No. 4 have ~~xxxxxxxx~~ acquiesced in their using water from said spring, and ratified the provisions so made by said partition; that heretofore, to-wit, on the 27th or 28th of March, 1894, said Baker prohibited one Floyd Shuler, who was then and is a farm hand in the employment of your orator, and who was then and is now living under your orator on said lot No. 1, from using the water from said spring on said lot 4 and made threats of personal violence against said Shuler if he should again come on said lot 4 to get water from said spring; that thereafter the said Baker threatened to send your orator as well as said ~~Shuler~~ <sup>Shuler</sup> into eternity if they again entered said premises to get water from said spring; that he, the said Baker, has built an enclosure or house over said spring and locked the same to prevent them from the use and enjoyment of said water right; and that there is no other spring on or appurtenant to lot No. 1 fit for domestic use; that your orator is informed, believes and charges that said



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Baker is a man of violent temper and will unless enjoined carry his said threats into execution, and commit personal violence on your orator and said Shuler in case he, the said Shuler, should attempt to use said water; that said Baker has intimidated the said Shuler by his threats aforesaid, and the said Shuler has not attempted to use water from said spring since said Baker prohibited him therefrom on March 27th or 28th last as aforesaid.

Your orator further shows the court that all of his title papers to said lot No. 1, and to his water rights and privileges to said spring on lot No. 4 were on record in the Clerk's office of the County Court for Lee County, Virginia, at the time and before the said Baker obtained a deed of conveyance to said lot No. 4; that he, the said Baker, at the time and before he contracted for said lot No. 4, had actual notice of your orator's rights and privileges to use water from said spring on lot No. 4; and that he, the said Baker, made said purchase with full knowledge of the same; and that unless said Baker is enjoined in accordance with the prayer of this bill great and <sup>inc</sup>imparable injury will result to your orator.

The object, therefore, of this bill is to protect and quiet the rights and title of your orator in and to the use and enjoyment of said spring on said lot No. 4, and to enjoin and inhibit the said Ira Baker from threatening or in any way from interfering with your orator or his tenants of lot No. 1 in the use and enjoyment of said spring on said lot No. 4.

The premises considered, and for as much as your orator is remediless save in a Court of Equity, he prays that the



J. F. BULLITT, Jr.

*Attorney at Law,*

ING STONE GAP, VA.

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said Ira Baker be made a party defendant to this bill, and be required to answer the same <sup>but not</sup> under oath; <sup>the oath being hereby waived</sup> that the rights, title and privileges of your orator may be protected and quieted in and to the use and enjoyment of said spring; and that an injunction may be granted him, enjoining and inhibiting the said Ira Baker from threatening or in any way interfering with him or his tenants of lot No. 1 in the use and enjoyment of said water rights and privileges to said spring on said lot No. 4; and that all such other, further and general relief may be granted your orator as in the premises may be just and right.

B. H. Service +  
J. F. B. Whit Jr.  
P. O.

R. E. Little

Virginia,  
Wise County.

To-wit:

I, R. P. Barron

a Notary Public in and for the County and State aforesaid, do hereby certify that R. E. Litton this day appeared before me in my county aforesaid and made oath that the allegations contained in the foregoing bill made of his own knowledge are true; and that those therein contained made from knowledge and information derived from others, he believes to be true.

Given under my hand this 10th day of May, 1894.

R. P. Barron,  
Notary Public Wise County, Virginia.



B.T.S.

C 8.04  
S 1.50  
Atty 15.00  
Comm 11.28  
Witto 484

R. E. Litton

3963  
250  
4213

vs. { Bill in  
Chancery

Ira Baker

1894 2nd May Rule Bill  
filed Spd 2nd June  
1st June Rules taken The  
last Monday in May  
Cause set for hearing  
by Plaintiff

Plffs costs  
Recovered

C 8.04  
S 1.50  
Atty 15.00  
Comm 11.28  
Witto 484  
Co Clk 7.50

4813

Defts

C 2.50  
S 1.00

Wp 2.50  
6.00



To the Hon. W. T. Miller Judge  
of the Circuit Court of Lee  
County:

Your petitioner Wm. L.  
Stout who humbly complain-  
ing would respectfully repre-  
sent, that there is now pending  
in this Hon. Court, a Bill in  
Chancery, filed by Robert E.  
Litter Against Ira Baker, the ob-  
ject of which as appears from  
the papers in said Cause is to  
enforce in favor of the p<sup>ff</sup> an  
asserted right to take using water  
from lot no 4, for the use of  
lot no 1 of the lands heretofore  
partitioned among the heirs at  
law and their vendees of the late  
Jeremiah Skaggs deceased. The p<sup>ff</sup>  
asserts as owner of lot no one  
this easement on lot no 4 - Your  
petitioner sold lot no 4 and con-  
veyed the same by deed of  
General warranty to said de-  
fendant Ira Baker, and your pe-  
titioner is advised, that being liable  
on his warranty, and bound thereby  
to defend said title, that he has  
an interest in the result of said  
Cause, he prays therefore that he  
be made a party defendant  
to said Bill and be allowed to...



defendant said title, and he  
furthermore states, 'that he was  
an innocent purchaser of lot  
no 4, not at the time knowing or  
ever have heard of the plat  
or his vendors claim to said  
supposed water right; and that  
for that and other reasons he  
can successfully defend said  
cause & save his vendee Mrs  
Baker harmless from said  
supposed water right. And if  
made a party he prays leave to  
be allowed to file his answer in  
due time to said amended Bill &  
be allowed to make defense thereto  
as he may be advised and here-  
after permitted by this Hon. Court.

And as his duty binds he will  
ever pray &c.

Wm. L. Stout-

A. A. Oncken for pr. Counsel.

Petitioner.

Sworn to before me this the 2<sup>nd</sup> day of  
November 1894

A. B. Munsey Clerk



Wm L. Stout<sup>12</sup>

Advs }  
Petition.

R. E. Litter

Filed November the 2nd  
1894 A. B. Munsey Clerk



To The Hon. W. J. Miller Judge of the  
Circuit Court of Lee County Va.

The demurrer and answer of  
Ira Baker, to a bill filed in  
this Hon. Court against him by  
R. D. Litter.

Respondent says the pliffs Bill  
is not good and sufficient in  
law and of this he prays judgement  
of the Court, &c.

But if any other or further ans-  
wer ~~be~~ deemed necessary, answering  
he says, It is true as appears by the  
pliffs exhibits that the conveyances, and  
partitions set-out by him, were  
made & had as shown by the same.

But respondent denies that the  
said partition or subsequent convey-  
ances give the pliff any right to take  
and use water from the defendants  
spring on lot no 4 - It is true its  
partition, so states that lot no 1 or. is  
to get water on lot no 4, that is a  
Cabin then on lot no 1 was so to use.

But it will be seen, that the par-  
tition does not, provide that lot no  
4 shall be subject to this right. and  
when respondent concluded to purchase  
the farm he now lives on, from Wm L.  
Stout he caused his title, that is Stout  
title to be examined. He found Stout had  
a conveyance among others, for lot no 4



there was no encumbrance or easement in his deed, and he was told that there was no exceptional Condition or easement in the assignment of lot no 4, in said partition, respondent did not go further than was well that he was purchasing of the Skaggs land now in controversy, and he was satisfied that, that, title was clear, and he is so still advised. He thereupon purchased the farm of which lot no 4, was and is a part, without any knowledge actual or otherwise that the plff had & claimed the right he now asserts.

Your orator made this purchase, in Oct-1893, and it would be a rather large undertaking for him to have gone over the records of every other man to see if he had title to this land, and if he were bound to search in the name of R. E. Litter or D. S. Litter or Joel Lax for an encumbrance or would. Surely land may not in the name of any one else.

Your respondent therefore denies that he had any actual knowledge or that the recording of the plffs deed, gave him any constructive knowledge of such right as the plff claims. He denies that unless the report of the Commissioners had charged this easement upon lot no 4, that there is any such right in said lot



unless actual notice had been given thereof. Respondent has been informed by Wm L. Stout his vendor, that he Stout purchased said lot no 4 without any knowledge of such right, but was informed of it after he purchased, but that even thereafter D. S. Litter conveyed this lot no 4 by its plat exhibit "D" to R. E. Litter but did not attempt at that time to convey any water right but only did so long afterwards when the said Stout offered to sell. Your respondent therefore charges that when D. S. Litter conveyed in Sept 1868, said lot without the supposed water right, it conveyed no such right on R. E. Litter and from Sept 1868, down to Aug. 1893 D. S. Litter his tenants & employees never asserted demanded or used said water under & by virtue of the right aforesaid. But he is informed by said Stout that R. E. Litter's tenants was permitted by him Stout to get water at some times from his pump, but not as a matter of right, but of grace, & that no use or occupancy, has ever been taken or made of the spring in question, but only to use water from the pump quite a distance below said spring on the same stream however. Your respondent therefore on this information charges that the tenants and



employees of the plff or D.S. Litten have  
used enjoyed and held openly adversely  
and notoriously said spring & water  
therefrom, but upon the contrary for  
more than ten years D. S. Litten has  
abandoned the same, and during  
that time down to Aug. 1893, R. E.  
Litten had no claim thereto, and the  
use thereof by him conferred no  
right whatever.

Your respondent denies that he  
ever threatened the plff his tenant  
Shuler or any one else or that he  
offered violence to them or either of them  
he did forbid them getting water from  
the spring and he did demand that  
they stay away and he did tell them  
he would not permit them to exer-  
cise the supposed right, and he did  
lock up the spring, all of which he  
did under legal advice, to compel  
the plff to assert his right if any  
he had to said spring before this  
respondent paid over the whole of  
the purchase money, for as he had  
purchased without any knowledge of  
the plff's claim he wanted that  
matter settled before he should fully  
pay for the land - and a reference to  
his deed a copy of which is her-  
ewith filed it will be seen he has  
a clear conveyance from said Stout.



Respondent admits therefore that he presented the peff & his tenant from the use of water, he says however that he made any threats, but he in good earnest told the peff & his tenant they must stay out, and he intended that they should do so. All this occurred however after this ~~peff~~<sup>Respondent</sup> had gone with com L. Stent his vendor to the peff and endeavored to settle & adjust the matter offering as the said Stent did to leave it to men, and if they decided that the peff was entitled to the spring to pay whatever sum they they should adjudge against him; to this reasonable proposition the peff fell in a passion & cursed & swore and made great threats as to what he would do.

This respondent may have some temper, but he has not made so foolish an exhibit of it as the peff on this occasion & others when he tried to force his way to said spring the ~~peff~~<sup>Respondent</sup> will endeavor to keep his temper in due bound; but he has the courage he hopes to defend his right against all comers. If this is grounds for an imputation, to restrain a man's temper & threats, respondent is curious to know what the Criminal law is made for. This overtivite peff this respondent says is false so far as threatening violence is concerned.



This respondent denies that the plaintiff has any right to said spring or water or that his exhibit conforms to the same.

He denies that D. S. Litterer or the plaintiff ever has for more than ten years exercised the same. He denies any knowledge of the plaintiff's claim until long after he had purchased and had a conveyance therefor - He denies any force or threatened force to the plaintiff or his tenant beyond what in law he had a right to do to protect his property - And he avers that his vendor Wm L. Stout had said spring in open actual culture use for more than ten years before the institution of this suit claiming it free from all claims or demands whatever - And that D. S. Litterer had abandoned the same for more than ten years before the conveyance to your creator. He denies each and every allegation of the plaintiff's Bill not herein admitted and, having now answered he proposes to be dismissed with his costs.

J. H. Freeman

P. J.



Ira Baker <sup>P.</sup>  
(9)

ackd & Answer

R. E. Litton

-Filed May the 21st  
1894 A B Munsey  
Clerk



To the Hon. W. T. Miller Judge of  
the Circuit Court of Lee Co  
Virginia:

The Demurrer and  
separate Answer of Wm L.  
Stout to a Bill filed in this  
Hon. Court against him and  
others by R. S. Litter:

Respondent says the plffs  
bill is not good and suffi-  
cient in law and of this he  
prays judgement of the Court &c.

But if any other or further  
answer be deemed necessary  
answering he says: It is not  
true that the plff has its water  
right asserted by him, to exist  
on lot no 4, in favor of lot  
no 1. - The reservation or assertion  
in the titles of no 1 lot, is no  
part of the title of lot no 4.  
And such a privilege as is set  
out in lot no one to be good &  
valid must be as definite and  
accurate as a deed, in which  
nature it is. But by reference  
to said Monument it will be  
seen it is too indefinite vague



and uncertain to be enforced &  
therefore is, as your respondent  
is advised must be void, and of  
no effect. Your ~~Complain~~ re-  
spondent, denies that he ever  
recognized or admitted any such  
right as the plff asserts, or any  
other as a right; this respondent  
purchased lot No 4, and paid  
a full & fair price therefor, and  
at the time, and before his pur-  
chase and for many years  
thereafter he did not have any  
knowledge whatever of the  
plff's asserted right, as claimed by  
D. S. Litter his vendor. It is  
true D. S. Litter and his employees  
and the plff came often to this  
respondent's pump not to the spring  
and got water, and this re-  
spondent made no objection, as  
he would have allowed the same  
to any other neighbor, nor did  
the said D. S. Litter or the plff ever  
claim such as a right; and no  
such thing was ever mentioned by  
the plff. - The water they got



They used as freely on their other  
land as for the use of lot no 1  
and if the granting such right, and  
privilege serves to divest a man's  
right & title to his property then  
he holds his tenure to land by  
a very frail & uncertain hold.

Respondent denies that at the time  
he purchased lot no 4, or before he  
had any knowledge of the plffs or  
D. S. Littons pretended right. And he  
is advised that as a matter of  
law it was not incumbent on  
him to examine the report of  
partition, in so far as it related  
to lot no 1, but that he was  
only bound and as a matter of  
fact did only examine lot  
no 4 whose title is clear. He  
denies each and every one of the al-  
legations of the plffs. Bill in so  
far as it asserts a right of water  
for lot no 1 or alleges that respondent  
ever recognized the same as a  
right or had any knowledge thereof  
or that the plffs were using  
said water, in its assertion of  
a right; but as before stated



But he admits he gave them leave  
and that they did occasionally  
use water from the water of said  
spring drawn at the pumps. And  
having now answered the proofs  
to be dismissed with his costs.

A. L. Pilemore  
for deft Wm L. Stout.

Wm L. Stout. 13

ad. J. Answer

R. S. Littor



R. E. Litton Plff.

vs

Ira Baker et al Dfts.

} In Chancery

This cause came on this the 13<sup>th</sup> day of March 1895, for final hearing, upon the papers formerly read herein, the answer of Wm L. Stout, and general replication thereto, the exhibits and depositions of witnesses, and was argued by Counsel, On consideration whereof, the Court doth adjudge, order, and decree that the Defendant Ira Baker his agents servants and employees be and they are hereby perpetually enjoined and restrained from prohibiting or preventing the plaintiff R. E. Litton or any of his tenants of lot number one in the bill mentioned, from <sup>for domestic purposes on lot No 1</sup> using water, from the spring in the said bill referred to, and from in any manner interfering with the said Litton or any of his said tenants in the <sup>said</sup> use of the said water, and that the said Baker, his agents, servants, and employees be and



they are each and all perpetually enjoined from so locating the door to the house which has been built over the said Spring, as to prevent the said Littou or any of his said tenants from having at any and all times the use of the <sup>for the purposes aforesaid</sup> said water, and perpetually enjoined from doing any other act which will in any manner interfere with the free access and right of way of the said Littou and his said tenants to and from the said Spring, And the Court doth further adjudge order and decree that the said Littou recover of the Defendant Ira Baller his Cost in this Suit Expended, and this Cause is Stricken from the docket.



R. E. Litton<sup>19</sup>  
vs Decree  
final.  
Ira Batterbat

Q.B.

Page 176

Enter this

M. J. M.

March 13<sup>th</sup> 1895



R. E. Litton

vs 3 Decree

Ira Baker

This cause came on <sup>this day</sup> to be again heard on the papers formerly read herein on depositions and on the petition of Wm L. Stout, praying that he made a party defendant and allowed to answer the bill in this cause, and was argued by counsel; whereupon it is ordered that complainant amend his bill and make Wm L. Stout a party defendant thereto, and this being done at bar, ~~it is ordered~~ leave is hereby given Wm L. Stout to file his answer to complainant's bill on or before 1st January sales 1895. And this cause is continued.



R. E. Litton

v. { Decree

Ira Baker

Entered in  
Chancery

Book Page 102

Euler this

W. M. 16<sup>th</sup>  
November 18<sup>th</sup> 1894.



R. E. Littow.  
vs  
Ira Baker. } In Chancery.

This cause came on this day to be heard on the bill of the plaintiff and exhibits filed therewith, the demurrer and answer of the defendant, and general replication to said answer, on motion of the defendant to dissolve the injunction granted in vacation in this cause, on the motion of the plaintiff for a continuance of this cause and the affidavit filed in support thereof, and counter affidavits filed by the defendant, and was argued by counsel. On consideration whereof it is adjudged ordered and decreed that the defendants demurrer and to said bill, as well as his motion to dissolve the said injunction be and the same are hereby overruled and denied, and this cause is continued.



R. E. Litton (10)  
vs E Deere.  
J. A. Baker.

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Entered in Chaney's Old Book 4 P. 2.

Enter this,  
W. J. M.  
June 6<sup>th</sup> 1894.



Circuit Court of Lee County, in Vacation.

R. E. Litton

vs.

Ira Baker.

In Chancery.

This day came R. E. Litton by counsel and presented to the court in vacation his certain bill in Chancery against Ira Baker, together with the exhibits mentioned in the said bill, on consideration whereof it is adjudged, ordered and decreed that until the further order of this court the said Ira Baker, his servants, employees and agents be and ~~they~~ he and they are hereby enjoined and prohibited from threatening, or in any way interfering with the said R. E. Litton or his tenants of lot No. 1 in the said bill mentioned, in the use and enjoyment of the water and water rights and privileges to the spring on lot 4 mentioned in the said bill; and that the said Baker, his agents, servants and employees be and ~~they~~ are hereby enjoined from locking the door to the house which has been built over the said spring until further order of this court. But this order shall not take effect until the said R. E. Litton, or some one for him, shall execute bond <sup>with good security</sup> conditioned ~~as the law requires, in case of an injunction,~~ in the penal sum of \$300<sup>00</sup> ~~#~~

May 11<sup>th</sup> 1894 W. J. Miller  
 To the Clerk of the Circuit Court  
 of Lee County Va.

Concluded to pay all such costs as may be awarded against the plaintiff  
 And all such damages as may be awarded in case this injunction shall be dissolved



11. 17<sup>th</sup>

R. E. Lutton

ps. { Decree in  
Vacation

Ira Baker

(17) (H. R. K.)

1



1. The depositions of Lloyd Shuler, J. W. Rivers, J. B. Flanary, A. D. Litton ~~and~~ D. S. Litton & R. E. Litton, taken before me, A. B. Munsey, a Commissioner in Chancery for the Circuit Court for Lee County Virginia, pursuant to notice thereto annexed at the Law Office of B. H. Sewell in the town of Jourdills Lee County Virginia on the 2<sup>nd</sup> day of October 1894, to be read as evidence in behalf of R. E. Litton in a certain suit in equity depending in the Circuit Court of Lee County Virginia where in R. E. Litton is plaintiff, and Ira Basser is defendant.

Present B. H. Sewell attorney for the plaintiff

A. L. Pridemore attorney for the defendant

The witness Lloyd Shuler, being duly sworn, deposes as follows;

Ques 1. Please state your age, occupation and where you live.

I am about 30 years of age. I am a farmer. I live on R. E. Litton's farm in Lee Co VA.

Ques 2. What is the place called of Mr R. E. Litton's that you



live on, and how long have you been living on this place?

Ans

I don't know. I have been living where I now live about 4 months.

Ques 3.

While you have been living on this place, state whether or not you used water from a spring at or near William Stauts house or where Stauts used to live. The foregoing question is excepted to because it relates to a time since the granting of its signature in this Cause and the defendant had no power to prevent its use. It also relates to a time after the defendant had purchased without knowledge of the plffs, asserted right.

A. H. Prentiss  
Jury.

Ans

I have used water from the Spring mentioned.

Ques 4.

While you were using water from this Spring, were you or not Mr R. E. Sutton's tenant?

Ans

I was.



Ques 5. State whether or not this is the Spring that is in dispute in this case?

Ans It is.

Ques 6. State whether or not you stopped using from said Spring, and if you stopped state when you stopped and why.

Ans I stopped using water at that Spring I cannot tell exactly when I stopped. I did not want to go into the water.

Ques 7. State whether or not any one forbid or prevented you from using water from said Spring, and if so, who it was.

Ans Ira Baker forbid me getting water there

Ques 8. Did you or not get water from said Spring after Mr Ira Baker forbid you from getting water there.

Ans I did not.

Ques 9. In forbidding you from getting water from said Spring, please



state whether <sup>or not</sup> Mr Geo Baker  
used words of threats against  
you or Mr Lutton, and  
state as near as you can  
what he said.

Ans If he used any threats I do not remem-  
ber it. He said he would keep us out  
of there.

mes 10. After Mr Baker forbid you  
getting water at said Spring,  
state whether or not Mr  
~~Geo Baker~~ Lutton directed  
you to keep on getting  
water from said Spring.  
The above question is excepted to  
in so far as it seeks to call  
out an answer as to what the  
plff R. L. Litter told the witness.  
The declaration is self serving &  
inadmissible - A. L. Richmond

Ans Mr R. E. Lutton directed me to keep on  
getting water there.

mes 11. State why you did not get  
water from said Spring as  
Mr R. E. Lutton directed you.

Ans I did not want to go in.



Ques 12. State whether or not you were afraid of Mr Ira Baker to again get water from said Spring.

The foregoing question is objected to because the fear of the witness has nothing to do with it? A. L. Pickensmore

Ans I just did not want to go in. all I can tell you I did not want to go in. I am honest about it.

Ques 1 Cross Examined.

You say you have lived on Mr Littens place about four months, if this suit was instituted more than four months ago, you did not go there until after the suit was brought did you?

This question is objected to. Because the records show when suit was brought and Besides the question is argumentative

B H Sewell atty for App

Ans I was getting water there before the suit come up.

Ques 2 Then you are mistake in how long you have live there, and how long you have been there more than four months - How long have you been there -



ans I have been there four months.  
Ques 3 Has Mr Baker ever forbid you getting  
water there since May 18 1894, since the  
writ was served in this case?

ans He has not.

Ques 4 Did Mr Baker tell <sup>you</sup> not to go to the  
spring, or to the pump?

ans He just told me not to go to the water.  
Ques 5 Who was with you when Baker  
told you to stay out?

ans Mr R. E. Litton.

Ques 6 What did you go over to the spring  
or pump for? and what did  
Mr Litton go with you for? Did  
you have buckets or pail with  
you or other vessels to carry  
water?

ans I went to get water, and he went to  
put me in. No Sir we did not have  
any vessels to get water in.

Ques 7 Then if I understand you, you  
went to get water to drink and  
Mr Litton went to put you in  
so you could get it?

ans Yes Sir.

Ques 8. Who began the conversation that day  
about the water Mr Baker or Mr  
Litton?



ans

As I was going the road behind Mr Litton Mr Baker asked me where I was going. I told him I was going up there to fix some fence. Mr Litton said I am going to take you up there to that water. Mr Baker said that Mr Litton nor no other man should go in there.

Ques 9 What fence was you going to fix and did you fix it?

ans It was a line fence above where I live. I did not fix it.

Ques 10 Did ~~you~~ Mr Litton and you start to fix the fence, and had nothing been said about the water that day, until you met up with Mr Baker?

ans Mr Litton told me he was going to fix up the fence. That as I know of.

Ques 11. Had you never before that day gone to Mr Baker as a new comer & asked him to get water from the spring on his land?

ans No Sir I got water right on till Stout sold the land.

Ques 12 Did you live there before Stout sold the land to Baker?

ans I did.



Ques 13 How long did you live there  
before Stout sold to Baker?

ans

I cant tell exactly how long, the best  
I can tell you is about two or three  
months.

Ques 14 How long was it before this suit  
was brought, that the conversations  
you say took place between you  
Baker & Kitten about the water <sup>up had</sup> the  
clay you say you went to fix  
the fence?

ans

I could not tell you exactly how long  
I reckon the suit must have been up  
then.

Ques 15 When you used water, did you  
go to the spring or pump to get it?

ans

I went to the pump.

Ques 16 Did ever <sup>you</sup> ask Mr Stout's consent or  
any one else's to go to the pump -

ans

No Sir.

Ques 17 How did it happen that you went  
to Stout's pump to get water without  
any body's consent?

ans

Mr Stout give me leave to go there &  
get water when I moved there.

Ques 18

I asked you a moment ago if you  
ever asked Stout or any one else leave  
to go to the pump and you answered no



I then asked you how it happened that you went to Stout's pump without leave and you say when you first moved there Stout gave you leave. Now please tell me which way is correct and you have leave or did you go without it.

Ans

When I first got water there Stout gave me leave.

Quest 19

You state you live, on Mr R. E. Litter's land, please state whether or not you live on and cultivate, but no one, in land partitioned as the land of Jeremiah Skaggs deeded, or do you work on and cultivate other lands of Mr Litter?

Ans

I do not know where lot no 1 is. I live in house on Mr Litter's land just above Mr Baker's, but hired to Mr Litter and worked for him.

Quest 20

Do you work on that part of Mr Litter's farm in and about your house say over about 20 acres, or do you in your employment work any and every where on his different farms he may send you. I worked for Mr Litter wherever he sent me.



Quest 21 After suit was brought, did not Mr Baker tell you or your wife that there was a suit about the spring and that you could come & get water whenever you desired, and hence you not since then been constantly using water from his pump?

This question is objected to. Because the defendant cannot prove self-serving declarations or statements, it is leading, Defendant's case from these things.  
B. H. Sewell atty for D.

Ans No Sir.

Quest 21 Where have you been getting using water from for the last two or three months?

Ans we have got from Mr Baker's.

Quest 22 How come you to get water from there who told you to?

Ans Mr Baker told my wife and she told me.

What the witnesses wife told him is objected to, as hearsay testimony.

B. H. Sewell atty  
for D.

Re-direct examination.

Quest 1, State whether or not you moved







Ans

The witness first answered that they did not. but after the Comr asked him again he said that he did not understand the question, and answered that they did get water there.

Ques 4.

While you were staying with Stout did he not say that R. E. Litten and his wife have a right to get water from this spring?

This question is objected to because in chief as is several of its foregoing and because chiefly leading - and because Stout has no interest in the same contrary to his duty.

Ans

I never heard him <sup>Stout</sup> say anything about it.

Re-Cross Examined

Mr Shuler, you have stated several times that you had been living on Mr Litten's land about four months - and a moment ago you said you moved there last fall and helped finish gathering corn. Did you not know all the time that you went there last fall and that from last fall to the present act<sup>n</sup> was more than four months.



13 And yes Sir, I think it is just four months  
And further this deponent saith not

witness 50  
1 day 50 Mileage  
48 Total 98

Floyd <sup>his</sup> Shuler  
mark

J. M. Rivers another witness, being  
duly sworn, deposes as follows:

Ques 1. State your age, occupation  
and place of residence.

Ans. My age is 38 years. I am a farmer. and  
my residence in Yokum Station Lee  
County Virginia

Ques 2. Please state whether or not  
you ever lived on, ~~or used~~  
or Cultivated the land of R. E.  
Littom <sup>as his tenant</sup> known and called lot-  
no 1. in this suit.

Ans I never lived on it. I Cultivated  
it last year.

Ques 3. During the time you cultivated  
said lot did you or not use  
water from the Spring in Can-  
bony in this suit?

This question is objected to, because  
it does not tend to prove or dis-  
prove the issue in this case. But as  
the defendant is not connected  
with it.

A. L. Proctor



Ans Yes Sir I got water there when I was at work there tending that land.

Ques 4 Who was then living where Mr. Baker now lives?

Ans Mr Stout.

Ques 5 State whether or not Mr William Stout ever recognized Mr R. E. Litton's right to use water from said Spring, when it was and where and in what way did he recognize such right.

This question is excepted to because Mr Stout's declaration can not be given to alter his deed, and until the defendant can be shown to have notice of the assumed right by a recorded instrument that binds him or by actual notice Stout's declaration can not bind Baker.

A. L. Pickens

Ans I was talking to Mr Stout about buying his land, and I told him I would rather have his land if it was not that Mr Litton had a water right there. And he said he had a water right for one family living on that lot. This happened some time in the fall of 1893 at Mr Stout's house.



Grass Examined.

Quest 1 Do you <sup>know</sup> the lot known as lot no 1 one, being the lot claimed to have a water right on lot no 4?

Ans I know by information where lot. No 1 lies.

Quest 2. What is the fair cash value of said lot no one, with the supposed right to water on lot no 4?

Ans I would think the land is worth \$30.00 per acre.

Quest 3 What is the fair cash value of said lot, and supposing the owner of it has no right to go upon lot no 4 for water? Give your best opinion?

~~Ans.~~  
Ans. I would think it would be worth Twenty dollars per acre.

Quest 4 If a good well could be dug that would afford a plentiful supply of water, near the house or on some convenient part of the lot would not the land in that event be worth, as much as with the water right, that is by supposing the well water to be as good as the spring & sufficient for the use of a family on said lot no 1



The last three questions are  
objected to, because they are  
irrelevant and immaterial to  
a decision of the issues involved  
in this case. and besides the  
last question is leading and  
argumentative.

B. H. Sewell atty for Plff.

Ans I dont think it would.

Quest 5. Please state your opinion of the  
value fair cash value of lot  
no 1 with its well upon it  
supposed in question no 4?

This question is objected  
to. Because irrelevant & im-  
material to a decision of the  
issue in this case. The value  
of these lots are not involved.

B. H. Sewell atty for Plff.

Ans. It would be worth \$22.50 per acre  
at the time you cultivated, the lot  
no 1 last year I believe you said  
did you cultivate any other land  
than lot no 1

Ans I suppose I cultivated a little more  
than lot no 1

And further this deponent saith ast.

John W. Rivers  
mark

Witnesses. 98  
attendance.



J. A. C. Flanory, another witness, being duly sworn, deposes as follows:

Ques 1. State your age, occupation and place of residence.

Ans

I am forty four years of age. My Occupation is Merchant & Farmer. My residence is Gokum Station Lee Va.

Ques 2 State whether or not ~~whether or not~~ you are acquainted with Lot of land owned by R. E. Litton, known as lot-no 1, in this suit, where T. J. D. Shuler now lives, also where J. W. Stout formerly lived, and the Spring in controversy in this suit. if so, how long have you known them.

I am acquainted with the land and have been all my life. Also know the Spring referred to.

Ques 3. During all this time, do you or not know that D. S. Litton and his tenants, and R. E. Litton and his tenants of lot-no 1, have used water from the Sped Spring.

The foregoing question is objected to



because D. S. Litton conveyed the land  
in 1878, and has since had no interest  
therein. And until 1893, R. E. Litton had  
color of claim. And besides, whatever  
they may have done Baker is an  
innocent purchaser without notice  
of any such claim and it can-  
not affect him. A. L. Pridemore  
I have seen them coming from that  
direction with water, and I suppose  
they got it from the spring in question.  
~~as that was all the spring~~

Ans

Ques 4.

State whether or not you ever  
heard a conversation between  
R. E. Litton & Wm Stout about  
Litton's water right. Or said  
spring, and if so, when  
where and what it  
was -

This question is objected to for reasons  
before stated. That Baker is not  
bound by them, and had no notice of  
it. A. L. Pridemore

Ans

In the year 1890 I heard a conversation  
between Mr R. E. Litton & Mr Wm Stout  
in which Mr Litton claimed an  
interest in said spring, and Mr Stout neither ad-  
mitted nor denied his right, after



1  
Stout moved to Ky and came back  
I told him what was said and  
he said at the time they was talking  
he did not know but what Litton  
did have a right. This was after Stout  
had sold the land.

So much of said answer as  
refers to stout's conversation is objected  
to because it was after he had sold  
and conveyed. A. L. Prilemoe

### Cross Examination

Quest: You say you are acquainted  
with lot no 1, what would you  
say is the fair cash value of  
said lot, with said supposed  
right of water on lot no 4 and  
its fair cash value without, and  
with a sufficient well upon  
it.

The above question is objected to. Because  
irrelevant and immaterial. The value  
of said lot in any way is not  
involved in this suit.

Ans With the supposed right of water I  
would value the land at from \$30 to \$35<sup>per acre</sup>  
per acre. ~~and without the right~~ I would  
value the land at not more than \$15<sup>per acre</sup>  
with no water.



Quest 2.

Has not Mr Litten after lands adjoining lot no 1, all under the same fence; and does not his tenants or lot no 1 do general work for Mr Litten on his after lands. If you answer he has after lands state how near lot no 1 there is a spring or branch of running water after than the spring & branch on lot no 4, and does not the branch from lot no 4 run down & upon Mr Litten's after lands?

Ans

he has other lands adjoining <sup>lot</sup> no 1. I don't know myself whether it is in the same enclosure or not. I think his tenants do general work for him. There is another ~~spring~~ <sup>branch</sup> some three hundred yards from lot no 1. ~~It~~ <sup>is</sup> ~~in~~ <sup>in</sup> the ~~south~~ <sup>south</sup> ~~side~~ <sup>side</sup> direction; but this water is not suitable for drinking purposes. It does ~~at~~ <sup>at</sup> sometimes but not only when the waters are high.

Quest 3

I will ask you if you have not heard Mr R. E. Litten say, since the question above was asked you, objected to. Because Monday, Mr Litten is here to answer for himself.

B H Sewell <sup>att</sup> ~~for~~



24

that lot no 1 is not enclosed separately but by a fence enclosing other lands as well?

Ans

I have so heard him say.  
And further this deponent saith not.

Witness, 90<sup>th</sup>

J J & Flanary

A. D. Litton another witness being duly sworn, deposes and says -

Ques. 1 State your age, occupation and place of residence.

Ans

My age is 40 years. Occupation is a Farmer. My residence is Yokum Station Lee County Va.

Ques 2. State whether or not you are acquainted with <sup>the</sup> lot <sup>of land</sup> called lot no 1. in this suit, and lot no 4, and the spring in controversy, if so, how long have you known them?

Ans

I am acquainted with them, and have known them ever since I was a boy. That is have known the lands & the spring.

~~Ques 3~~

Ques 3.

During the time you have known lot no 1. who has been in the possession and occupancy of the



Same,

This question is objected to for reasons heretofore stated, that is that until the defendant is shown to have knowledge by a recorded instrument or actual occupancy and statements by the occupants, none bearing

A. L. Pridemore

Ans

My father owned it until he transferred to my Brother R. E. Sittou & they have had it in possession, and have had different tenants upon it.

Ques 4,

During all this time, did not O. S. Sittou or his tenants, and R. E. Sittou or his tenants let no 1. use water from the Spring in Cautionary in this suit -

The foregoing question is objected to for reasons above stated set off of Page.

A. L. Pridemore

Ans

They did.

Ques 5

During the time you have known said lot no 1. who has been living on and in the possession of the land on which said



Spring is situated.

Ans

Henry Miller first Owned it; and he conveyed to W<sup>m</sup> L Stout and Stout conveyed to Ira Baker the present owner.

Ques 6. State whether or not there is any water, other than the Spring in controversy, on or appurtenant to said lot no 1. fit for drinking or domestic purposes, <sup>2</sup>.

This question is objected to because irrelevant, and in no way affects the defendant Baker. A L Pridemore

Ans

There is not.

Ques 7. State whether or not the defendant Ira Baker, ever had a conversation with you in regard to what William Stout had said to him about R.E. Suttons water right to said Spring, and if he did, state when and where it was, and what he said to you about the same.

This question is objected to, because it does not show whether or not it was before or after his purchase from Stout

A. L. Pridemore



I don't remember ~~whether~~ this conversation took place when my father was present or not but I do remember that it took place at some time.

Ans He had a conversation with me in regard to it. It was some time last Spring at my house. I think about April. He said <sup>he</sup> wanted to ask about a water right he said Mr Stout had told him that R E Litton had claimed a water right but that he had stopped the family from using water and that R E Litton had threatened to law him about <sup>it</sup> but dropped it and did not do so. My father and myself explained to him that it was not about the water <sup>right</sup> to lot no 1, and he said every body else had told him that R E Litton had a water right to the Spring\*.

Ans 8, State whether or not Mr Boller said that Stout ~~said~~ made these statements before the court, or deed was made to him for the Stout-land.

Ans

My recollection is that he said this occurred when they was ~~meeting~~ <sup>i.e. the conversation</sup> between Stout ~~and~~ <sup>and</sup> ~~he~~ <sup>he</sup> also spoke of it when they was sowing wheat sometime last fall (about October).

The further taking of these depositions is adjourned until to morrow morning at 8 o'clock this the 2<sup>nd</sup> day of Oct 1884  
A B Munsey Commr



25

Met pursuant to adjournment at  
the law office of B H Sewell at  
8 O'clock A M. this the 3rd day  
of October 1894

A. B. Munsey Comisr

Present the same attorneys as on yes-  
terday.

Ques 9. Above state whether or not D.S.  
Littou and his tenants, and R.E. Littou  
or his tenants during the time  
you speak of, have occupied  
lot no 1, and used openly, contin-  
uously and notoriously water  
from the Spring in Embury.

This question is objected to because  
it does not show the time each one  
held, and it is irrelevant unless notice  
to Baker is shown. A. L. Prudence

ans

I suppose they have I never heard  
of any objections until after Mr  
Baker come in possession of the land.

Ans 10.

State whether or not Mr Baker stated  
to you that Mr Stout told him at any  
other time about the said water right  
to said Spring, before his contract with  
Stout for the land was made, or before  
the deed was made to him, if he  
did, state when and what it was.



This question is objected to because  
Stout's declaration can not bind  
Baker unless notice to Baker is  
shown, by a properly recorded instru-  
ment or actual notice given before  
the purchase made. And because  
no deed to R. E. Litter is shown  
for the time he so claimed.

A. L. Pridemore

Ans

The conversation I had with Mr Baker  
in regard to the conversation with him  
and Stout was after Stout moved to  
Ky. I don't know when the deed was  
made. But this conversation Baker had  
with Stout he said was when they  
was sowing wheat.

Cross Examined.

Quest 1 After your father deeded the land  
but no 1 to R. E. Litter, did he ever  
exercise the right to take and use  
water from said spring as stated  
by you?

Ans

I suppose he did. There was one  
season when he cultivated land there  
that he used water from the spring  
that is cultivated a part of the Hobbs place.

Quest 2 Is it not a fact that your father  
D. S. Litter and R. E. Litter used



said water when working on their adjacent lands, with hired hands, not residents of lot no 1, as much or more than said water was use by actual occupants of lot 1 lot?

Ans I suppose they did when they was working near the Spring.

Quest 3 Does your father still continue in the use of said water right? if you answer he does not please state as near as you can when within your own knowledge he did so use it the last time or times?

Ans I dont ~~know~~ know when he last exercised such right, but it has been some time.

Quest 3 If I understand you, in your former statements, the conversation you had with Mr Baker was after Stout had sold to Baker, and Baker had moved on the place & Stout moved away to Kentucky?

Ans It was after Stout had moved to Kentucky & after Baker had moved on the place.

Quest 4 And if I understand you, Baker was telling you of what Stout



said to him Baker, in the fall of last year 1893, while Baker was engaged sowing wheat on the Tent place & boording with Stent?

Ans Yes Sir that is correct,

Quest 5 Did you not then and now understand, that Baker did not sow wheat on the Tent place until after he had made his purchase from Stent?

Ans I think it was after he had purchased the land.

Quest 6. Has the house on lot no one been occupied by some one living in it all the time, since your father & R. E. Litten have owned it if you answer it has not state as near as you can how much of the time it has been re-occupied by tenants?

Ans As far as I know it has been occupied all the time except a few days when one tenant would move out before another would move in.

Quest 7 What would you say would be a fair cash value for lot no 1, with the right for the tenants thereof to



get water from this spring; and without such right. Consider in reference to this lot alone, and not in connection with other lands?

The above question is objected to. Because irrelevant and immaterial as to a decision of the issue in this case. The value of said lot is not in any way involved.

B. H. Smeed Esq. for app.

Ans. I think <sup>the</sup> land with a water right is worth from \$25.00 to \$30.00 per acre. And without such right from \$15.00 to \$20.00 per acre.

Just 8 About how many acres is contained in lot No 1?

Ans. About 20 acres.

Just 9 In a former part of your depositions, you say you or your father explained to Baker that the water right that Stent, should have told Baker, that R. E. Litter threatened to law Stent about was not in reference to the right of lot No one, Did you know what Stent did say to Baker or was you only going by what Baker said and what you knew of the fact?



Ans I know nothing of what occurred between Stout & Baker, but me and my father explained to Mr Baker that there had been a controversy between R. E. Litton and Mr Stout about a tenant living in house on another piece of land but not on lot No 1. And we made this explanation to Baker from what he said Stout had told him,

Re-Direct: Examination.

Ques 1. Do you know when Mr Baker moved on the Stout place, if so, when was it?

Ans I can not state exactly, but think it was about the 1st of December 1893,

Ques 2. You say that Baker said <sup>Stout, a bandaged</sup> his conversation with said water right & the spring in Castro occurred when Baker was sowing wheat, now state if you can whether or not this wheat sowing was before the 15<sup>th</sup> day of October 1893,

Ans I can not say,

And further this deponent says not,

A. D. Litton

Witnessed <sup>etc</sup>  
2 days of 148



Dixon S. Eitton, another witness  
being duly sworn, deposes as follows:

Ques 1. State your age, occupation  
and place of residence.

Ans My age is 74 years. My Occupation  
Farmer. My place of residence is  
Rocky Station Lee County Va.

Ques 2. Are you acquainted with  
the tract of land owned by Jones  
miah Skaggs deceased, at the time  
of his death, situated in Yorktown  
Station Lee County Virginia, if so,  
how long have you been acquaint-  
ed with it?

Ans I have known the land ever since  
1846 or 1847.

Ques 3. Are you the D.S. Eitton to whom  
a certain lot <sup>no 1</sup> was assigned  
in the partition of the said  
tract of land of said Skaggs,

Ans I am.

Ques 4. I hand you exhibits A, B,  
C, D, & E filed with the ~~defendant~~  
~~and~~ plaintiffs bill in  
this suit, state whether or  
not they cover lot no 1, and  
are the title papers of said  
R.E. Eitton to said lot no 1.



and the water right & the  
Spring in Controversy,

Ans

They are the papers that cover lot No 1.  
and the water right here in Controversy  
The foregoing question and answer  
are objected to, because the title  
papers show what they cover and  
personal evidence to show what they  
contain are inadmissible, and  
further because the fact sought to  
be proven is admitted by the  
Answer & is therefore unnecessary.

A. L. Prudden

Ques 3.

Please state whether or not  
all the parties to the partition  
of the <sup>said</sup> lands of the said Jeremiah  
Seaggo deceased, at once took  
possession of and accepted the  
the shares or lots assigned  
them, in said partition?

Objection  
2

The foregoing question is objected to  
because there is no controversy in  
reference to anything except the  
water right and what the parties  
to the partition did is immaterial  
& irrelevant A. L. Prudden

Ans

They did so far as I know. I never  
heard of any complaints <sup>from</sup> any of them.



33.

Ques 4

State whether or not all the parties to said partition accepted the provisions made in said partition for the use of water, on the different shares<sup>2</sup>. This question is objected to because irrelevant, and immaterial, no controversy existing as to the fact sought except as to lot no 1.

Ans  
Ans

A. L. Pridemore

They did so far as I know, they made no complaint at the time.

Ques 5,

Please state whether or not you or your tenants, and your vendor H. E. Sifton or his tenants have been in the possession and occupied, said lot no 1, ever since the date of said partition, and if so, state whether or not you have exercised the right <sup>made in said partition</sup> to use water from the spring on lot no 4, during said time,

The above question is objected to because it does not show when he occupied or when he ceased & because Baker is an innocent purchaser without notice and the occupancy could not affect him.

A. L. Pridemore



Ans

Me and my tenants of Lot no 1 used water from the Spring on No 4 until R E Litton & Myself went into partnership and our tenants still used water from said Spring peaceably and unmolested, until the year 1889, Since that time R. E. Litton and his tenants have so used such water.

The foregoing question was & its answer is excepted for reasons often stated i.e. that Baker is an innocent purchaser without notice &c.

A. L. Friedman

Ques 6. State whether or not there is any other water on or appurtenant to said lot no 1, other than the Spring on lot no 4, fit for drinking or domestic purposes?

Ans

There is not.

Ques 7. Please state whether or not Mr Ira Baker ever had a talk with you in regard to a conversation that William Stout had with him, about R. E. Litton's water right to Spring on lot no 4, if so, state when Baker said Stout talked to him about



said water right, and what it was  
that Stout said to Baker.

The foregoing question is objected to  
because, hearsay, Baker can not  
be heard to the prejudice of Stout.  
Baker is a live & competent and  
because what Stout said after he  
sold in Centennial of his title  
is not admissible. A. L. Prichard

Ans

I had a conversation with Mr Baker  
at A D Littons house he asked me  
what kind of a water right I had  
to the Spring on Lot No 4. I told him  
that I bought it in the year 1867.  
and had, had it peaceably and quietly  
ever since until I decided to  
R. E. Litton, and since that time  
him and his tenants have had  
the same rights so far as I know.  
this conversation occurred in last  
March or April. As to what Baker  
said Stout told him about said  
water right. I make the same  
statement A D Litton made.  
Verass Examined.

Quest: When did you convey lot no 1 to  
Mr R. E. Litton and when the possession  
over to him was it by your deed of  
Sept 2. 1878?



Ans <sup>I deeded</sup> ~~Sold~~ him the land September the 2<sup>nd</sup> 1878 and turned the possession of it over to him at that time, but we ~~continued~~ put the land in partnership and continued it until 1889.

Quest 2 After your deed of Sept-2<sup>d</sup> 1878, did you claim any right to or control over lot no 1, only as the same should be used, in the partnership, and when you so deeded it did not R. E. Litten put in as so much of his R. E. Litten part of the partnership Capital?

Ans I did not, and he did put it in as so much of the land in the partnership, I mean to say I did not use the land only under the partnership contract.

Quest 3 Please state why in your deed of Sept 2<sup>d</sup> 1878, you did not embrace the said your supposed right to water on lot no 4?

Ans It was omitted by a mistake when I found it so I told Robt I would convey it to him and I did so.

Question 3 just above is objected to, because the deed shows what was conveyed. is the best evidence

B. H. Sewell Atty  
for Plffs



37 Did not you, and after you R. E.

Quest 4 Litter, claim the right, to use water from lot no 4 for your other lands. This question as well as lot no 1, and did not is objected to. R. E. Litter threaten to law Mr Stout for denying your right to do so. And as a matter of fact - have you not used water from said spring more for twenty or twenty five years than lot no 1? Because the claim, to or right to use water from other lands was nothing to do with the rights on lot no 1. R. E. Litter altho

Ans

At one time I thought I did have the right, and did claim it. I suppose R E Litter claimed the same right. I do not know whether R E Litter threatened to law Mr Stout or not. I don't know that we did we would go and get a keg of water now and then.

Quest 5. How much in your opinion does the right for tenants or the owner of lot no 1 to have the right and privilege to use water from the spring on lot no 4, damage or require the sale of lot no 4?

This question is objected to. Because the value of these lots, or damage are not involved in this suit. and these



questions are irrelevant & immaterial  
to a decision of the issue involved  
in this case. B. H. Sewell atty for

Ans. I would rather have Baker's farm by  
\$5000 without any incumbrance on it.

Inst 6. What is the fair cash value of lot  
no 1, with its water privilege  
spoken of by you & what is its  
fair cash value without such  
right?

This question is objected to. Because  
the value of these lots on water is  
an irrelevant & immaterial  
decision of the issue in this case.

B. H. Sewell atty for

Ans. I would think the land to be worth  
\$250 or \$300 <sup>with the water right</sup> per acre, and would  
not be <sup>worth</sup> over half as much without  
the water right. And I would not  
have bought the land if it had  
not been for the water right. For  
I had a piece of land adjoining it  
that had no water on it. and I  
bought it before the land was par-  
titioned. I accepted lot no 1 in the  
partition because it had a water  
right.



Re - Direct Examination.

Ques 1.

Did not Mr <sup>R.E.</sup> Litton & his tenants  
of lot no 1. use water from  
Spring on lot 4, under the Survey  
of 1878.

This question is objected to be-  
cause impossible the deed of  
that date contains no such  
provision and whatever the  
meny have done could be  
done under the deed.

A L Philmore

Ans

They did.

Ques 2.

State whether or not you  
intended to convey whatever  
rights to lot no 1, that were  
conferred by your deed of  
1878, to R. E. Litton.

This is objected to because, the  
mistake if any could not pre-  
clude Baker who is a purchaser  
without notice.

A L Philmore

Ans

I did.

witness

And further this deponent saith not.

attended 2 days  
\$1.00

R. E. Litton

R. E. Litton another witness being  
duly sworn deposes as follows:



Ques 1. State your age, occupation and place of residence, and are you the plaintiff in this suit?

Ans My age is 42 years, I am a farmer and my place of residence is Dryden Lee County Va. I am the plaintiff in this suit.

Ques 2. State whether or not you are acquainted with the tracts of land known in this suit as lot no. 1 and lot no 4, and the Spring in controversy, and if so, how long you have known them.

Ans I am acquainted with lot no 1 and have known it for 21 or 22 years. And know the Spring on lot no 4, <sup>the same length time,</sup> but do not know the boundary of lot No 4.

Ques 3. State whether or not D.S. Litter and his tenants, and you or your tenants have been in the possession and occupancy of lot no 1, and if so, how long, and state whether or not during said time the said D.S. Litter and tenants, and you and your <sup>of lot no 1</sup> tenants have used water



#1.

from said Spring on lot no 4.  
This question is objected to  
for same reasons as stated to  
the same question asked earlier  
see. A. L. Pridemore

Ans

We have. about 21 or 22 years to  
my own knowledge. We have.

mes. 4

State whether or not said use  
of <sup>said</sup> water from said spring during  
said time, has been open  
notoriously, continuous, and  
adverse?

This question is excepted to for  
reasons after stated - Such pres-  
cription could not affect - Mr  
Baker unless he had had notice  
by record or deed or otherwise. ~~or~~  
A. L. Pridemore

Ans

mes 5 It has.  
state whether or not the exer-  
cise of said water right  
has been made under the  
title papers filed with your  
bill in this case.

Ans

mes 6 It has.  
State whether or not you or  
your agent of said lot no 1.  
was ever prevented from using



water from said Spring on lot 204,  
and if so, who prevented you,  
when was it, and how you  
were prevented -

This question is objected to be-  
cause in material and irrelevant

And

A.H. Philmore  
My tenant Floyd Shuler & myself  
were prevented. Ira Baker the  
Defendant in this Suit prevented us  
By threats of force & Violence, this  
Occured about the 23 or 24<sup>th</sup> of April  
1894.

Ques 7. What were the threats and  
means used by said Baker  
against you & tenant <sup>of lot 1,</sup> to  
prevent you from using  
water from said Spring?

Ans

He forbid us to enter his premises  
and said if we did so he would  
put us into eternity.

Ques 8 Please state whether or not you  
were informed, and believed  
at the time, that said Baker  
was a man of violent temper  
and believed that <sup>he</sup> would carry  
his threats into execution, and  
commit personal violence on



8  
You or your tenant of lot no 1, if  
you should attempt to use  
water again from said  
Spring?

This question is excepted because  
irrelevant and immaterial no  
such issue is raised or can  
be passed on by this Court.

Ans

I had been informed <sup>A. J. Prieemore</sup> ~~that~~ <sup>that he was a man of violent temper</sup> and be-  
lieved he would carry his threats  
into effect if we should attempt  
use water from said Spring.

Ques 9. After these threats and informa-  
tion, you applied for the  
injunction was it not?

Ans I did.

Ques 10. State whether or not there is  
any other water on <sup>or adjacent to</sup>  
lot no 1, other than the Spring  
on lot no 4, fit for drinking or  
domestic use?

Ans There is not.

Ques 11. State whether or not the defendant  
Fra Baker ever told you  
that Mr William Stout  
informed him before he  
contracted for the Stout land



that you had a water  
right to the Spring on lot  
No 4, <sup>2</sup> for yourself or tenants of lot No 1.  
This question is objected to because  
hearsay of the plaintiff and most  
objectionable kind and because it  
is immaterial & irrelevant.

A. L. Pringle

Ans

~~He told me that Stout said  
we had a question about the  
using water right where for the house  
where Trusley lived, and said  
Stout told him that <sup>the witness</sup> I found  
out I had no right, and the question  
was dropped. This was before Baker  
purchased Stout's land. Baker told  
me this after he had bought the  
land. The Trusley house is out  
on lot No 1. And I so told Baker.  
And Baker did tell me that Stout  
said I had a water right to Spring  
on lot No 4. for myself or tenants~~

Ans

He did not tell me that Stout said  
I had a water right. But on the 26<sup>th</sup>  
day of March 1894 Baker asked me  
if I had a water right to his Spring  
for Lot No 1 and told him I had.



I then asked Baker if Stout did not tell him about the water right, and Baker said that Stout told him before he purchased the land that we Stout and myself had question about using water for the house where Trusley lived. That controversy was <sup>in</sup> 1891. And that Stout said I the witness found out I had no right and the matter was dropped. Trusley was then living in house on the Wynn land. And was using water only by permission of Stout. I bought the wall of the house from Stout with the understanding my tenant was to use water from the Spring on lot No 4.

Ms 12,

Do you know when Mr Baker first came to look at Mr Stout's land, and if so, state whether or not your tenant of lot no. 1 was <sup>then</sup> using water from said Spring on lot 4.

This is objected to unless it be shown that Baker was notified of the claim under which the tenant used water.

A L Williams



Ans

I dont know the time definitely,  
I did not see him, but heard  
of him being down there looking  
at Stouts land. I suppose it was  
in the 1st or 2nd week in Sept 1893  
My tenant was then using water  
from said Spring, or pump.

Quest 13.

While Mr Baker was boarding  
at Mr Stouts, and up to the  
17<sup>th</sup> day of October 1893,

state whether or not during  
said time your tenant of lot 1,  
<sup>was</sup> used from said Spring on lot 4.

Ans

he did use water from said Spring  
or pump during said time,  
has examined

Quest 1.

Is the Conversation before  
detailed as occurring between  
you & Baker, all the conver-  
sation you had with him  
Baker as to what Stout  
said.

Ans

That is all.

Quest 2

Who was present at the time, you  
say Baker made the threats detailed  
by you?

Ans

No one except Shuler Myself & Baker.



Quest 3 Where was Baker, what was he doing and was he armed?

Ans He was near his house plowing in the field, I did not see any arms but supposed he had a pistol in his pocket.

Quest 4 Where was you going on that occasion, and how did the conversation begin in reference to the water?

Ans I was going with Shuler to put him in possession of the water, and Baker asked Shuler where he was going. I told Baker I was taking ~~Shuler~~ up there to put him in possession of the water, Baker then forbid us to go in, and said if we entered onto his possessions he would put us into eternity. ~~So asked Shuler if he was afraid of Baker and then we turned back.~~

Quest 5 In your direct-examination you say your father or your self have had the open & adverse use of this water for several years, if you ever had any possession or adverse use of the water after them to go & get it and send or allow your tenants to do so please state how it was?



Ans We had no possession of the water other than to use it.

Quest 6 Is not the spring or pump from which you got water in lot no 4 enclosed by a fence of Mr Stent, now Baker's & has it not been so enclosed for many years and was so enclosed when Baker purchased from Stent?

Ans It is in a field, and been so for <sup>several years</sup>. At the time you say, the threats were made had you told Shuler that you was going to put him in possession of the water or had you told him you was going to fix a fence?

Ans I had not told Shuler I was going to put him in possession of the water, but told him I was going to fix some fence. I had told him the day before to go to the water.

Quest 7 What act or acts did you intend to do in order to put Shuler in possession of the water?

Ans I just aimed to tell him to go in. Quest 8 On that occasion was Shuler or yourself armed if so what weapons did you have?



49

Ans

I was not armed myself, and if Shuler was I did not know it

Quest 9

What is a fair cash value of lot no 1 with the water right - as you claim it, and without any such right?

Objected to for reasons heretofore stated to same question. <sup>B. H. Sewell, atty for Deft.</sup>

Ans

The land on lot No 1 is worth \$25.00 per acre with the water right. And without the water right is worth \$15.00 per acre, and there is about 20 acres in lot no 1

Quest 10

~~How~~ How much do say the water right you claim for lot no 1 on lot no 4 damages the sale of lot no 4, or rather the sale of the Stent farm?

Objected to for reasons stated to same questions heretofore asked.

Ans

I ~~think~~ it

<sup>B. H. Sewell, atty for Deft.</sup>

Ans

I think it would damage it from \$300.00 to \$400.00.

Quest 11

In its use your your tenants have made, of the water on lot no 4 has it been as much or more used by you on your other lands as on lot no 1?



This question is objected to. Because  
the use of other tenants of other  
lands does not affect the rights  
of tenants on lot no. 1 to use  
water from said spring, & this  
is immaterial. B. H. Luvell atty  
for R. E. L.

Ans We have not.

Quest 12 Have you not made frequent use  
of water from this spring or pumps  
on lot no 4, for purposes on lands  
of yours other than lot no 1?

Objected for reasons above  
stated. B. H. Luvell atty for R. E. L.

Ans we have used some water for  
other lands than lot no 1.

Quest 13 Before Mr Baker purchased and when  
he was sowing wheat, at the times  
you say your tenants were using  
water from the pump, did <sup>you</sup> know  
whether or not Mr Baker knew  
they were so using under your  
right or by permission of  
Stent?

Ans I do not know what Mr Baker  
knew about it.

And further this deponent saith  
not.

R. E. Lillon



The defendant objects to the Commissioner taxing any mileage as the witnesses were not summoned and can only claim for the day called - and not for volunteer attendance. And the mileage is not properly taxable because the depositions should have been taken in the neighborhood where the case.

A. L. Pulemore for  
Ira Baker.

The further taking of these depositions is adjourned until Friday October the 5th 1894.

A. B. Munsey Com in

Virginia

County of Lee to wit:

I A. B. Munsey a Commissioner in Chancery of the Circuit Court for Lee County Virginia do hereby certify that the foregoing depositions of Floyd Shuler J. M. Rivers, J. J. C. Flannery A. D. Litton D. S. Litton and R. E. Litton were duly taken sworn to and subscribed before me at the times and place and for the purpose in the Caption and orders hereto mentioned. Given under my hand this the 12th October 1894

A. B. Munsey Com in Chancery



R. O. Littor (18-

vs Depositions

Ira Baker

Filed October the 12<sup>th</sup>

1894 by A. B. Munsey

Court in Chancery

A. B. Munsey  
Clerk

Copied in Chcy 14 hours  
at 75¢ @ 10.00

Witnesses 4.34  
Total 14.34



To Mr Ira Baker.

TAKE NOTICE. That I, on the 13<sup>th</sup> day of

October, 1894, at the law office of B. H. Sewell,  
in the town of Jarrsville Lee County Virginia

will proceed to take the deposition of Filmore Litton and others,  
and will also at said time re-take the depositions  
of R. E. Litton and D. S. Litton,  
which, when taken, are intended to be read as evidence on my behalf in a certain suit in Equity

now pending in the Circuit Court of Lee County, State of Virginia, in which

I am plaintiff and

You are defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

This October 8<sup>th</sup>, 1894.

Very Respectfully,

R. E. Litton  
By Counsel



R. E. Litton,  
vs { Notice  
J. A. Baker.

---

Executed Oct the  
9<sup>th</sup> 1874 by Delmar,  
a true & lawful copy  
of the within order  
to J. A. Baker,  
wife, she being  
over the age of 21  
years, and of sound  
mind, found at  
his place of abode  
this Oct 10<sup>th</sup> 1874  
L. C. H. Wade D. S. for  
C. C. Filanary  
S. L. C.



The depositions of R. E. Litton  
and D. S. Litton <sup>retaken</sup>  
before me A. B. Munsey a Com-  
missioner in chancery for the  
Circuit-Court for Lee County-  
Virginia, pursuant to notice  
Went annexed at the law office  
of B. H. Sewell in the town of  
Goussville, Lee County Virginia  
on the 13<sup>th</sup> day of October  
1894, to be read as evidence  
in behalf of R. E. Litton in a  
certain suit in Equity depending  
in the Circuit-Court of Lee County-  
Virginia, wherein R. E. Litton  
is plaintiff and Ira Baker  
is defendant.

Present B. H. Sewell atty for the

No one present for the defendant.

The depositions of R. E. Litton  
and D. S. Litton are retaken  
in this case, because the  
following questions were  
forgotten and omitted to be  
asked <sup>of them</sup> in their former  
depositions. B. H. Sewell atty  
for Plaintiff.

The witness R. E. Litton, being duly sworn.



deposes as follows:

Ques 1. In your former deposition you state that you are acquainted with lots no 1, and no 4, and the Spring in <sup>in this case</sup> Canterbury, please state whether or not the said Spring is of good quality, or how the quality is.

Ans It is of good quality, and runs all the time.

Ques 2. State whether or not you were injured or damaged by being prevented from Mr Ira Boller and your Chauts of lot no 1 - from using water from the said Spring, on lot no 4.

Ans I was.

Ques 3. State whether or not you would be injured or damaged if kept or prevented from using water from said Spring.

Ans I would be

Ques 4. State whether or not you could estimate or tell the ~~any~~ extent to which you were injured or damaged from being so prevented from using water



1  
From said Spring, and  
to what extent you would  
be injured if such prevention  
continued.

ans

I ~~cannot~~ Could not tell to what  
extent I was injured, and what  
the extent it would be if continued.  
And further this deponent saith  
not.

R. E. Lilton

Further.

~~The~~ witness R. E. Lilton, being  
duly sworn deposes as  
follows:

Ques 1. In a former deposition  
<sup>in this case</sup>  
yours, you state you are  
acquainted with the Spring  
in controversy in this case.  
Now please state of what  
quality of water is said Spring.  
ans The quality of <sup>the</sup> water of said Spring is  
good, and affords a sufficient quantity  
for two families, and for more.

Ques 2. State whether or not the owner  
<sup>mentioned in this case,</sup>  
and tenants of lot no 1, would be  
injured or damaged if prevented  
from using water from said



Spring on lot no. 4.  
Ans They would be damaged, and as  
to what extent could not tell. and  
witnesses, day <sup>not</sup> Could estimate the injury if such  
5<sup>00</sup> prevention should continue.  
And further this deponent saith  
not. D. S. Litton

Virginia

County of Lee to wit:

A A B Munsey a Commissioner in  
Chancery for the Circuit Court for Lee  
County Virginia. do hereby Certify that  
the foregoing depositions of R. C. Litton  
and D. S. Litton were duly retaken  
sworn to and subscribed before me  
at the time and place, and for the  
purpose in the Caption hereto men-  
tioned.

Given under my hand this the 13<sup>th</sup> day  
of October 1894

A B Munsey Comm. in  
Chcy.



R E Litton (16

Depositions

Bra Baker

Filed October 13<sup>th</sup>  
1894 by A B Munnay  
Coun in Ch.

A B Munnay Clerk

Coun in Chays fees <sup>cts</sup> 75-  
Witness 87  
122



R. E. Litton  
vs. Deposition  
Ira Baker.

The depositions of R. E. Litton and  
D. S. Litton retaken before  
me A. B. Mursey a Commissioner in  
Chancery for the Circuit Court for Lee  
County Virginia pursuant to notice  
hereto annexed at the law office of  
B. H. Sewell in the town of Jones-  
ville Lee County Virginia on the  
13<sup>th</sup> day of October 1874, to be read  
as evidence in behalf of R. E. Litton  
in a certain suit in Equity depend-  
ing in the Circuit Court of Lee County  
Virginia, wherein R. E. Litton is  
plaintiff and Ira Baker is defendant.

Present B. H. Sewell Atty for Plff.

No one present for the defendant.

The depositions R. E. Litton and D. S.  
Litton are retaken in this case, be-



cause the following questions were forgotten and omitted to be asked them in their former depositions.

B. H. Sewell Atty for Plff.

The witness R. B. Lutton being duly sworn deposes as follows:

Ques 1. On your former depositions you state that you are acquainted with lots No 1. and No 4, and the spring in controversy in this case, please state whether or not the said spring is of good quality or how the quality is.

Ans It is of good quality and runs all the time.

Ques 2 State whether or not you were injured or damaged by being prevented by Mr Ira Baker and your tenants of lot No 1, from using water from the said spring on Lot No 4.

Ans I was.

Ques 3 State whether or not you would be injured or damaged if kept or prevented from using water from said spring.

Ans I would be.



Ques 4. I whether or not you could estimate or tell the extent to which you were injured or damaged from being so prevented from using water from said spring, and to what extent you would be injured if such prevention continued?

Ans I could not tell to what extent I was injured and what the extent it would be if continued.

And further this deponent saith not.

A. B. Litton

Another witness D. S. Litton being duly sworn deposes as follows:

Ques 1. In a former deposition of yours in this case you state you are acquainted with the spring in controversy in this case, now please state of what quality of water is said spring.

Ans The quality of the water of said spring is good, and affords a sufficient quantity for two families, and for more.

Ques 2. State whether or not the owner and tenants of lot No 1, mentioned in this case would be injured or damaged if prevented from using from said



Ans Spring on Lot No. 11.  
They would be damaged, and as  
to what extent could not tell, and  
could not estimate the injury if  
such prevention should continue.  
And further this deponent saith not.  
D. S. Litton

Virginia

County of Lee to wit:

I A. B. Munsey a Com-  
missioner in Chancery for the Circuit  
Court for Lee County Virginia, do  
hereby certify that the foregoing  
depositions A. B. Litton and D. S. Litton  
were duly retaken sworn to and sub-  
scribed before me at the time and  
place, and for the purpose <sup>in</sup> the  
caption hereto mentioned.

Given under my hand this the 13<sup>th</sup> day of  
October 1894.

A. B. Munsey Comm. Chy.



R. E. Litter

AGAINST

Dr Baker et al  
To R. E. Litter

Take notice that on the 25<sup>th</sup> day  
of February 1895, in the town of Mt. Sterling  
at the Law office of A. A. Taylor in Montgomery  
County, State of Kentucky I will proceed to take the deposition of myself  
Wm L. Stuart

to be read as evidence on behalf of myself & Dr Baker  
in a certain suit in Chancery now pending in the Circuit Court of Lee  
County, State of Virginia, wherein you are  
Plaintiff and I and said Dr Baker are Defendants. And if from any  
cause the taking of said deposition be not begun on that day, or being begun not completed, the same will be  
continued from day to day or from time to time, and, if desired, from place to place, until the same are complete. You  
may attend and cross-examine if you wish.

February 18<sup>th</sup> 1895

Very Respectfully,

Wm L. Stuart

By Prudence O. Sewell  
Atty for defts.



We accept the legal service of the  
within notice. Feb. 18<sup>th</sup> 1895.

J. F. Bullitt Jr } atty  
B. H. Sewell, } for deft.

Wm L. Stewart

and Justice

R. S. Ritten



The depositions of Wm L. Stent taken pursuant to notice herewith filed, at the Law office of A. A. Hagleriff in the town of Mount Sterling in the County of Montgomery and State of Kentucky, on the 22<sup>d</sup> day of February 1895; and which are intended to be read on behalf of Wm L. Stent and Ira Baker in a certain suit in Chancery now pending in the Circuit Court of Lee County Virginia wherein R. E. Little is plaintiff and Ira Baker & Wm L. Stent are defendants.

Wm L. Stent one of the defendants after being duly sworn, deposes & says.

Quest-1<sup>st</sup> by ~~defendant~~

1. State your age residence & occupation & whether or not you lived in Virginia, if so when did you move to this state?

Ans. My age is 55 years - occupation - farmer. I lived formerly in Va. P.O. Occum Station I lived on the land in controversy until Dec. 1893 at which time I sold them to Ira Baker & then moved to Ky.

2. Tell all you know about the matters in controversy in this action.

Ans. I purchased lot No. 4 from Miller's wife about 18 years ago. when I purchased lot No 4 as above stated I did not examine the partition proceedings as to lot no. 1. I did not then nor for several



years after <sup>know</sup> that <sup>the plff.</sup> they claimed any water right on lot no. 4. for the use of lot no. 1. I never agreed for Plff. to get water as a matter of right on lot no. 4. but only allowed him to use water from said lot as a matter of neighborly courtesy. The first time Plff. ever asserted any claim to the right of water on said lot was in 1891 when a controversy arose as to Plffs. right to the use of said water. When this controversy arose in 1891 as stated above Plff. claimed the right of water for a house on other land. In about 1890 I put in pipes & run the water from the spring to my house where I then lived & Plff. used as much or more water for their other lands as they did for lot no. 1.

The first time I ever examined the partition proceedings of lot no. 1. was about 1894

X Examined by deft.

1. State whether or not you told Mrs Ida Baker before you sold him your lands or farm mentioned in this case or at the time of the sale that R.E. Litten the Plff. had a water right to the springs on lot no. 4. in controversy in this case

Ans.

I did not. because I did not consider that he <sup>Plff.</sup> had any such right

Q

Did you not tell said Baker that the Plff. had a water right to said



Spring before he paid you any or all  
of the purchase money for said land  
and I did not.

And for that said the most  
W. L. Stoute

County of Montgomery State Kentucky to wit.  
I H. C. Howell Justice of Peace for Montgomery Co. Ky  
do certify that the foregoing depositions  
of Wm L. Stout were, on the foregoing  
pages were duly taken sworn to and  
subscribed before me, at the times  
and places and in the manner in the  
Caption mentioned.  
H. C. Howell J. P. M. C.



Wm. L. Stout<sup>18</sup>

Ads } Depos.

R. E. Litter

Received by mail in good  
condition and filed Feb'y  
The 25<sup>th</sup> 1895.

A B Munsey Clerk



The depositions of Wm. L. Stout taken pursuant to notice herewith filed at the law office of A. S. Hazlesigg in the town of Mt Sterling in the County of Montgomery <sup>and</sup> State of Kentucky, on the 22<sup>d</sup> day of February 1895, and which are intended to be read on behalf of Wm. L. Stout and Ira Baker in a certain suit in Chancery now pending in the Circuit Court of Lee County Virginia where A. S. Litton is plaintiff and Ira Baker and Wm. L. Stout are defendants.

Wm. L. Stout one of the defendants after being duly sworn, deposes & says;

1. State your age residence & occupation & whether or not you lived in Virginia



if so when did you move to this state?

Ans

My age is 56 years - occupation farmer. I lived formerly in Va. - P.O. Yocum Station. I lived on the land in controversy until December 1893 at which time I sold them to Mr Baker and then moved to Ky.

2.

Tell all you know about the matter in controversy in this action.

Ans

I purchased lot No. 4 from Miller & wife about 18 years ago. When I purchased lot No. 4 as above stated I did not examine partition proceedings as to lot No. 1. I did not then nor for several years after knew that the plff. claimed any water right on lot No. 4. for the use of lot No. 1. I never agreed for Plff to get water as a matter of right on lot No. 4. but only allowed him to use water from said lot as a matter of neighborly courtesy. The first time Plff ever asserted any claim to the right of water on said lot was in 1891 when a controversy arose as to Plffs right to the use of said



water. When the controversy arose in 1891 as stated above Plff claimed the right of water for a home on other land.

In about 1890 I put in pipes and run the water from the spring to my house where I then lived & Plff used as much or more water for these other lands as they did for lot No. 1.

The first time I ever examined the partition proceedings of lot No. 1. was about 1894.

X Examined by deft.

1. State whether or not you told Mr Wm Baker before you sold him your lands or farm mentioned in this case, or at the time of the sale that R.B. Catton the Plff. had a water right to the spring on lot No 4 in controversy in this case.

Ans

I did not because I did not consider that he Plff had any such right.

2.

Did you not tell said Baker that the Plff. had a water right to said spring before he paid you any or all of the purchase money for said land

Ans

I did not.  
And further with not W.L. Stout.



County of Montgomery State Kentucky to wit:

I H. C. Howell Justice of the Peace for Montgomery Co. Ky do certify that the foregoing depositions of Wm. L. Stout were on the foregoing pages were duly taken sworn to and subscribed before me at the times and places and in the manner in the caption mentioned.

H. C. Howell J. P. M. C.

Wm. L. Stout 18  
Adm. 3 Depos.

R. C. Little



The depositions of Wm L. Stout  
and Ira Baker, taken at the law  
office of A. L. Pridemore in the  
town of Jonesville Lee County  
Virginia, on the 3<sup>d</sup> day of Nov.  
1894, pursuant to notice here-  
to attached and which are intended  
to be read as evidence of Ira  
Baker in a certain suit in  
Chancery now pending in the  
Circuit Court of Lee County  
Virginia wherein Robert E.  
Litten is plaintiff and said  
Ira Baker defendant.

Ira Baker a witness of lawful  
age after being duly sworn  
deposes and says:  
Test 1<sup>st</sup>.

by defendant Counsel,  
Please state whether or not, you  
are the defendant in this case  
if you answer yes, state whether  
or not before or at the time you  
purchased the land you live on  
from Wm L. Stout you had any  
notice whatever of the claim now  
made in this suit - by the party to  
take one sixth from your spring  
as a matter of right? state all  
you may know about the transaction?  
This question is objected to. Because  
it is leading, and because records



of the papers show notice, question  
does not state whether actual  
notice or otherwise B/H. Sewell atty

Ans/- Yes, I am the defendant in  
this suit. At the time I pur-  
chased the land, from Wm L Stout,  
a part of which is known as Lot  
No. 4, on which the Spring in  
controversy is situated. I examined  
& had examined, Mr Stout's title  
papers to the land I purchased  
from him & among them were  
the title papers to Lot No. 4. I  
saw & was advised from said  
title papers that there was no  
incumbrance on Lot No. 4 & that  
Mr. Stout, so far as I could see  
was in the full possession  
of it. I had no notice what-  
ever of the Plaintiff's claim, set  
out in his Bill, at the time  
I purchased the land. At the time  
~~the title was~~ I was at Mr Stout's  
house, sowing wheat, the fall after  
I had purchased the land, Mr.  
Stout said to me that if Mr.  
Littton put any body there I did not  
want to use water, that for  
me to put them out, that Littton  
had no right there, that Littton  
& he (Stout) had had a little trouble  
& Littton had gone & examined his



papers & he had no title & had  
just dropped it & that they  
just getting water gratis. I  
believe it & know no better till  
in March following. On the 22<sup>d</sup>  
day of March Mr Harvey young  
& I were going to Big Stone  
Gap, & he informed me that  
Mr. Little claimed a water right  
to my spring. I saw Mr. Little  
a few days afterwards & he told  
me that he did have a right  
to that spring. I asked him to  
set up his title, that I had bought  
it believing that I owned it  
clear of all encumbrances. This  
is all the notice I had. I had  
no notice before the purchase,  
& this is all I had afterwards.

The above answer is objected  
to in the following portions:  
1<sup>st</sup> The investigation by the referee  
and of the records of Stout's title  
and his advice is immaterial  
& irrelevant.

2<sup>d</sup> The records of Plaintiff's title  
show the water right, and cannot be  
contradicted by mere testimony.

3<sup>d</sup> What Mr Stout said is hearsay,  
Stout is here to speak for himself,  
and such parts of the answer as  
is hearsay is opposed to. A. Hewell  
for Plff



Please state, whether or not at the time the peff and Floyd Shuller came to take possession of the spring as they state, you were armed or made any threats? state what you did say & whether or this occurred after you had requested Mr Little to set up his right if he had any?

Ans. 2. I had no arms. This was some 5 or 6 weeks after I asked Mr. Little to set up his title. All the threats I made was I ~~told them~~ <sup>will</sup> keep them out off there till the law said for them to go in.

#### Cross-Examination.

Ques 1. When you came to land at the Stout land with a view to purchase, state whether or not Mr R.E. Little then had a tenant living where Floyd Shuller now lives?

Ans 1. I think he did.

Ques 2. State ~~whether or not~~ who this tenant was, and whether or not you saw him and his family getting water from the spring in controversy.

Ans. Geo Insley, I believe was the man. I did not see him & family getting water from the spring.

Ques 3. At any time before you purchased, or at any time before Mr Stout made



you a deed to the land, state whether or you ever saw Mr Linton's tenants of lot no 1, using water from the Spring in Outbrossey.

Ans 2. I don't remember to have seen any of them getting water before the deed was made to me by Stout.

Ans 3. Was the deed delivered to you before you sowed wheat?

Ans 3. I think I got it when I came to sow wheat, but do not know for certain.

Ans 4. State as near as you can when you sowed wheat?

Ans. 4. It was in the fall after I bought the land, before the 1<sup>st</sup> of December of that fall.

Ans 5. On your return from looking at Mr Stout's land, did you not stay all night with Frank Willis, and while there in a conversation with said Willis was Mr Linton's water right to said Spring mentioned?

Ans 5. Yes, I stayed all night with Willis. He did not tell me any thing about Linton's water right.

Ans 6. Did you sow wheat before you moved on the Stout land or after you moved?

Ans. 6. Before I moved.

Ans 7. After you told Mr Linton what you would?



keep them out as you have stated,  
and before the institution of this suit,  
at Big Stone Gap, in a conversation  
with W. E. Harris, did you not say  
to him, that from what you said  
to him that he <sup>had</sup> ~~was~~ <sup>thought</sup> ~~thought~~ <sup>that</sup>  
you had a pistol?

Ans. No Sir. I was ploughing &  
in my shirt sleeves. I had  
no pistol then & ~~do not~~ <sup>do not</sup> carry  
am not in the habit of  
carrying pistols.

Ques 8 When Mr Sittum & Shuler were going  
up the road at the time you told them  
you would keep them out, why  
was <sup>it</sup> you asked Shuler where  
they were going.

Ans. 8 Because, I mis-trusted some-  
thing.

Ques 9 On what occasion did you mean  
to keep them from using water  
from said Spring, and in what way  
did you intend to prevent them from  
using water from said Spring?

Ans 9. Yes, sir, I meant to keep them  
out until the law allowed them  
to go in. I don't know that I  
had in mind at that time any  
particular way to keep them  
out. I thought I had the law  
on my side & had a right  
to protect my possessions.



Ques. At that time had any legal proceedings been instituted by you or Mr. Bilton to settle the controversy about this Spring?

Ans. None had been instituted by me or none by Mr. Bilton so far as I know.

And further this witness saith  
wch. Jrd Baker

Virginia, Lee County, to wit.

I, D. C. Sewell, a notary Public for the county of <sup>apocryphal</sup> Lee in the state of Virginia, do certify that the foregoing deposition of Ira Baker was duly taken, subscribed & sworn to before me <sup>at the time</sup> for the purpose in the caption mentioned. Given under my hand, this 3<sup>d</sup> day of Oct. 1894.

D. C. Sewell N. P.  
11



Ira Baker (17)

Adls } Deposition.

R. E. Litton.

Received from Notary  
before whom taken  
& filed this Oct. 3<sup>d</sup>  
1894..

W. B. Munsely Clerk

Not. Fee.... 2 50



Ira Baker

Adm. &amp; Depositions

R. O. Litton

The depositions of Wm. L. Stout and Ira Baker taken at the law office of A. B. Pridemore in the town of Jonesville Lee County Virginia, on the 3<sup>rd</sup> day of Nov. 1894 pursuant to notice hereto attached and which are intended to be read as evidence of Ira Baker in a certain suit in Chancery now pending in the Circuit Court of Lee County Virginia wherein Robert O. Litton is plaintiff and said Ira Baker defendant.

Ira Baker, a witness of lawful age after being duly sworn deposes and says:

Quest 1.<sup>st</sup> by defendants counsel.

Please state whether or not, you



are the defendant in this case, if you answer yes state whether or not before or at the time you purchased the land you knew or from Wm. L. Stout you had any notice whatever of the claim now made in this suit by the Plff to take and use water from your spring as a matter of right?

State all you may know about the transaction?

This question is objected to, Because it is leading, and Because records of title papers show notice, question does not state whether actual notice or otherwise. Atty. General for Plff.

Ans L- Yes, I am the defendant in this suit. At the time I purchased the land from Wm. L. Stout a part of which is known as Lot No 4, on which the spring in controversy is situated. I examined and had examined Mr Stout's title papers to the land I purchased from him & among them were the title papers to Lot No 4. I saw I was advised from



said title papers that there was no encumbrance on lot No 4 & that Mr. Stout, so far as I could see was in the full possession of it. I had no notice whatever of the Plaintiff's claim set out in his bill, at the time I purchased the land. At the time I was at Mr. Stout's house sowing wheat, the fall after I had purchased the land. Mr. Stout said to me that if Mr. Litton put any body there I didn't want to use water, that for me to put them out, that Litton had no right there, that Litton and he (Stout) had had a little trouble & Litton had gone and examined his papers & he had no title & had just dropped it, & that they just getting water gratis. I believe it & knew no better till in March following. On the 22<sup>d</sup> day of March Mr. Harvey Young and I were going to Big Stone Gap & he informed me that Mr. Litton claimed a water right to my spring. I saw Mr. Litton a few days after.



wards & he told me that he did have a right to that spring. I asked him to set up his title, that I had bought it believing that I owned it clear of all encumbrances.

This is all the notice I had. I had no notice before the purchase & this all I had afterwards.

The above answer is objected to in the following particulars:

1<sup>st</sup> The investigation by the defendant of the records of Stout's title and his advice is immaterial & irrelevant.

2<sup>d</sup> The records of plaintiff's title show the water right, and cannot be contradicted by parol testimony.

3<sup>rd</sup> What Mr Stout said is hearsay. Stout is here to speak for himself, and such parts of the answer as is hearsay is objected to.

B. H. Sewell Atty for Plff.

Please state, whether or not at the time the plff and Floyd Sheller came to take possession of the spring as they state, you was armed or made any threats? State what you did say &



whether this occurred after you had requested Mr. Litton to set up his right if he had any?

Ans 2. I had no arms. This was some 5 or 6 weeks after I asked Mr. Litton to set up his title. All the threats I made I told them will keep them out off there till the law said for them to go in.

### Cross-Examination.

Ques 1. When you came to look at the Stout land with a view to purchase, state whether or not Mr. R. B. Litton then had a tenant living where Floyd Shuler now lives?

Ans 1. I think he did.

Ques 2. State who this tenant was, and whether or not you saw him and his family getting water from the spring in controversy.

Ans. Geo. Truesley. I believe was the man. I did not see him & family getting water from the spring.

Ques 3. At any time before you purchased, or at any time before Mr. Stout made you a deed to the land, state whether or you ever saw Mr. Litton's tenants of lot No 1, using water



from the spring in controversy.

Ans 2 I dont remember to have seen any of them getting water before the deed was made to me by Stout.

Quos 4. Was the deed delivered to you before you sowed wheat?

Ans 3. I think I got it when I came to sow wheat but do not know for certain.

Quos 4. State as near as you can when you sowed wheat?

Ans 4. It was in the fall after I bought the land, before the 1<sup>st</sup> of December of that fall.

Quos 5 On your return from looking at Mr. Stouts land, did you not stay all night with Frank Willis, and while there in a conversation with said Willis was Mr Littons water right to said spring mentioned.

Ans 5 Yes I stayed all night with Willis. He did not tell me any thing about Littons water right.

Quos 6 Did you sow wheat before you moved on the Stout land or after you moved.

Ans 6 Before I moved



Ques 7

After you told Mr Litter that you would keep them out as you have stated, and before the institution of of this suit at Big Stone Gap, in a conversation with W. B. Harris did you not say to him, that from what you said to Litter that he Litter thought - you had a pistol?

Ans

No Sir. I was plowing and in my shirt sleeves. - I had no pistol then I am not in the habit of carrying pistols.

Ques 8.

When Mr. Stout and Shuler were going up the road at the time you told them you would keep them out, why was it you asked Shuler where they were going.

Ans 8

Because, I mistrusted something.

Ques 9.

On that occasion did you mean to keep them from using water from said spring, and in what way did you intend to prevent them from using water from said spring?

Ans 9

Yes Sir. I meant to keep them out until the law allowed them to go on. I didn't know that I had on mind at that time any



particular way to keep them out.

I thought I had the law on my side  
& had a right to protect my possessions.

Ques 10.

At that time had any legal proceedings  
been instituted by you or Mr. Litton to  
settle the controversy about this spring?

Ans

None had been instituted by me & none  
by Mr. Litton so far as I know.

And further this witness saith not.

Ira Baker

Virginia Lee County to wit:

I, D. C. Sewell a Notary Public  
for the County aforesaid in the State  
of Virginia, do certify that the fore-  
going deposition of Ira Baker  
was duly taken subscribed &  
sworn to before me at the time  
and for the purpose in the  
caption mentioned.

Given under my hand, this 3<sup>d</sup> day  
Oct. 1874

D. C. Sewell, N.P.



Virginia

See county to wit:

This day A B Munsey personally appeared before me and made oath that he has no recollection of having any conversation with B H Sewell in regard to Ira Baker filing his answer to R. E. Luttons Bill and ~~he~~ further states that the endorsement ~~is~~ made on the answer that it was filed on the 21st day of May is correct to the best of his knowledge and belief and that the papers have been in my office since that time.

J. T. F. Richmond Clerk

On the day, the answer shows it was filed, I gave the answer & Bills & papers in the case to the Clerk of the Circuit Court then in his office and have not since had the papers in my possession or even saw them up to this day. June 4<sup>th</sup> 1894

A L Pond

Sworn to before me this the 4th day of June 1894

A B Munsey, Clk



A. B. m  
Baker  
23 Affidant  
R. E. Litton  
June 4<sup>th</sup>, 1894



Virginia. See County Court:

This day B.H. Sewell of Counsel for R.E. Little, ~~this day~~ personally appeared before the undersigned, and made oath that his best recollection <sup>and belief</sup> is that since the 21<sup>st</sup> day of May 1894, he has <sup>not</sup> ~~known~~ <sup>known</sup> ~~by~~ <sup>more than</sup> the Clerk of the Court if an answer had been filed in the cause of R.E. Little vs Ira. Baker, and that he was informed that it had not been filed, and with this understanding informed this associate Counsel, and sent R.E. Little word that it had not been filed, and this is the reason ~~the~~ <sup>no</sup> further preparation had been made for preparing the case ~~ready~~ <sup>ready</sup> for trial, thinking that the defendant was waiting till Court to file his answer. And he further states that in his opinion that it was absolutely



necessary to take the  
depositions of several  
witnesses before the  
plaintiff could safely  
go to trial, and that had  
he known that an answer  
had been filed, steps  
would have been taken  
to take said depositions  
& prepare the case for  
trial for the plaintiff.  
Given under my hand  
this the 4<sup>th</sup> day of  
June 1894.

J. T. F. Richmond Clerk

RE Lyellton  
Affidavit  
for  
continuance

Dr Baker



D 5315  
D 531

This Indenture made and entered into this,  
23<sup>rd</sup> day of December, in the year of our  
Record 1867, by and between, Fleming &  
Shelton & his wife Sarah J. Shelton, of the County  
of Gray and State of Kentucky, of the first  
part and Jell S. Cox, of the County of Lee  
and State of Virginia, of the other or second  
part, Witnesseth, That for and in consid-  
eration of the sum of three hundred and  
fifty dollars, lawful money of the United  
States, by the party of the second part paid  
to the parties of the first part, the receipt  
whereof is hereby acknowledged, the said  
parties of the first part do grant, bargain,  
and sell, and by these presents, alien, convey  
and confirm unto the party of the second  
part his heirs and assigns forever, one  
undivided seventh part, and all the interest  
that may hereafter accrue to us or either  
of us in and to a certain tract or parcel of  
land, situate in Lee County in Gocum Sta-  
tion that descended to the heirs of Jere-  
miah Skagg deceased, known and called  
the home tract of land of the said Jeremiah  
Skagg deceased, hereby ~~including~~ excluding from  
this conveyance the tract or parcel of land  
said Jeremiah Skagg bought of Hobbs, to  
have and to hold the afore said seventh  
part of the said tract or parcel of land call-  
ed the home tract of the said Jeremiah Skagg  
with all and singular, the rights and appur-  
tenances, thereto belonging, unto the said



1 party of the second part, his heirs and assigns  
2 forever, free from the parties of the first part  
3 their heirs, and assigns forever, and the said  
4 parties of the first part do for themselves, their  
5 heirs, and assigns forever warrant and agree  
6 agree to defend the title to the said undivided  
7 seventh part of the said tract of land. hereby con-  
8 veyed unto the said party of the second part  
9 his heirs and assigns forever against all  
10 claims, titles, or rights whatsoever and  
11 we, the parties of the first part do further  
12 covenant to and with the party of the second  
13 part, his heirs and assigns that we have  
14 a good and lawful title and right to convey  
15 the one seventh part of the said tract  
16 of land. In witness whereof we, the  
17 said parties of the first part, have here-  
18 unto set our hands and affixed our  
19 seals this day and year herein first written

20 Fleming Shelton Seal

21 Sarah Shelton Seal

22 Commonwealth of Kentucky, Knox County  
23 I, the undersigned, subscriber, one of the  
24 Commonwealths Justices of the Peace in  
25 and for the County in the Commonwealth  
26 of said, do certify that Fleming H.  
27 Shelton, whose name is signed to the foregoing  
28 deed dated the 23<sup>rd</sup> day of December  
29 1867, has this day acknowledged the same  
30 before me, in my said County, Given under  
31 my hand this 29<sup>th</sup> day of May 1868

32 (Signed) Minor Bryant J.P.C



Commonwealth of Kentucky, Knox County, to wit:  
Wee, the undersigned Subscribers, two of the Com-  
monwealths Justices of the Peace, in and for the  
County of Knox, and Commonwealth of Kentucky,  
do certify that Sarah J. Shelton, the wife of Flem-  
ming H. Shelton, whose names are signed <sup>to the writ-</sup>  
ing above bearing date on the 23<sup>rd</sup> day of Dec-  
ember 1867, personally appeared before us  
in our said County, and being examined by  
us privily and apart from her husband, and  
having the writing afore said fully explained  
to her, she, the said Sarah J. Shelton, acknowl-  
edged the said writing to her act and deede  
and declaired that she had willingly  
executed the same, and does not to retract  
it. Given under our hands this, 29<sup>th</sup> day of  
May 1868.

(Signed) Minor Bryant, J. P. K. C.  
" Jacob Goshe J. P. K. C.

State of Kentucky } ss  
Knox County }

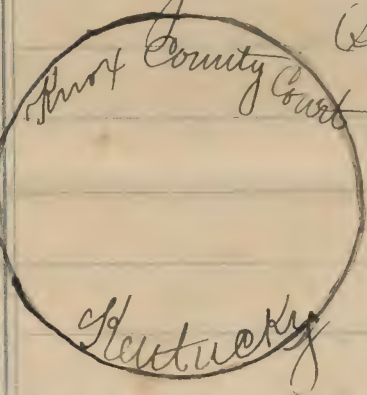
I, John H. Davis, Clerk of the County  
Court within and for the County and State  
aforesaid, do hereby certify that Minor  
Bryant & Jacob Goshe Esqr, before whom  
the acknowledgment of the foregoing deed was  
made (from Flemming Shelton wife to Joel S. Boy)  
and who have thereunto signed their names,  
was at the time of so doing acting Justices  
of the Peace within and for the County and  
State above named duly elected, qualified,  
and sworn, that all their official acts as



1 are entitled to full faith and credit, and  
2 that their said signatures are genuine.

3 In testimony whereof, I have hereunto set  
4 my hand and official seal, this 29<sup>th</sup> day of  
5 May 1868.

6 Signed John H. Davis Clerk  
7 By H. H. Hunter D. C.,



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DB 15  
P 529

This deed made & entered into this, 25th, day of July 1868 by and between Joel S. Cox. Norma Cox, his wife, of the County of Lee and State of Virginia of the first part, and Dixon S. Litton of the County and State aforesaid of the second part. Witnesseth, That the parties of the first part for and in consideration of the sum of three hundred and seventy five Dollars, one hundred and eighty dollars of which has been paid, and for the residue whereof a lien is hereby retained on the land hereby conveyed, hath granted, bargained, and sold, and doth by these presents alien, convey & confirm unto the party of the second part, his heirs and assigns, forever, a certain tract or parcel of land situate, lying and being in Lee County in the State of Virginia, and bounded as follows, to wit: one undivided seventh part, and all the interest that may hereafter descend to or accrue to Sarah J. Shelton & Fleming Shelton or either of them in and to a certain tract or parcel of land situate in Lee County in former Station that descended to the heirs of Jeremiah Skaggs deceased from said Jeremiah Skaggs, known and called the home tract of land, that belonged to the said Skaggs, hereby excluding from this conveyance the tract or parcel of land said Jeremiah Skaggs bought of Hobbs, to have and to hold the said tract or parcel of land hereby conveyed unto the said party of the second



1 part, his heirs, and assigns forever, free  
2 from the parties of the first part, their heirs and  
3 assigns forever, and the said parties of the  
4 first part do for themselves, their heirs, and  
5 assigns, the said tract or parcel of land,  
6 unto the party of the second part, his  
7 heirs & assigns forever. Warrant and  
8 defend against all claims or persons or  
9 titles whatsoever, in witness whereof we the  
10 parties of the first part, have hereunto  
11 signed our names and affixed our seals  
12 this day and date herein before written

13 Joel S. Cox Seal  
14 Naoma <sup>her</sup> Cox <sup>mark</sup> Seal

15 State of Virginia, Lee County, to wit:-

16 I, Joshua A. Redwine, a Jus-  
17 tice of the Peace in and for said County, do  
18 certify that Joel S. Cox, whose name is signed  
19 to the foregoing deed, dated the 25th day  
20 of July, 1868, has this day acknowledged the  
21 same before me in my said County. Given un-  
22 der my hand this 28th day of July 1868  
23 J. A. Redwine J.P.C.

24 State of Virginia, Lee County, to wit:- We  
25 Joshua A. Redwine and George W. Young, two  
26 of the Commonwealth's Justices in and for  
27 the County of Lee aforesaid, do certify that  
28 Naoma Cox, the wife of Joel S. Cox, whose names  
29 are signed to the writing above, bearing date  
30 the 25th day of July 1868, personally appeared  
31 before us in our said County and being exam-  
32 ined by us privily and apart from her hus-



band and having the writing aforesaid  
fully explained to her, she, the said Nanna  
Cox, acknowledged the said writing to be  
her act and deed, and declared that  
she had willingly executed the same, and  
does not wish to retract it. Given from un-  
der our hands this 28th day of July 1868.

J. W. Redwine J.P., C.  
George W. Young J.P., C.

Rose County Court, clerk's office, the 30th  
day of September 1868. This indenture  
of Bargain and Sale for land between  
Jesse Cox and Nanna Cox, his wife,  
of the first part, and Nixon S. Cotton of  
the other part, all of the County of Rose  
and State of Virginia, being duly stamped  
is admitted to record upon the certifi-  
cates of two Justices of the Peace in and for the County  
and State aforesaid

Teste - Henry J. Morgan, clerk

A Copy - Teste: J. V. F. Richmond clerk



3rd

Dixon S. Lutton<sup>B</sup>  
Tommy Oa py  
Dec 16.

Jail S. Cox wife

"B"

c 60



Virginia

SS 15  
P 638

At a Court of quarter sessions Court  
held and held for Lee County, at the Court  
house thereof, on Friday, the 21<sup>st</sup> day of  
August 1868.

Joel S. Cox

Plaintiff

against

Jeremiah Scagg heirs et als, Defendants } In

Chancery  
This cause is set for trial on the motion of the  
Complainant, and thereupon Fleming  
H. Shelton and Sarah J. Shelton entered  
their appearance to the Bill, and it app-  
earing that Martha Ann Burse and her  
husband Stephen Burse, Polly Scagg,  
John Scagg, Minerva Scagg, Rebecca Scagg,  
and Elizabeth Scagg are infants, therefore  
Hurry J. Morgan is appointed Guardian ad  
litem for them, who thereupon accepted  
said appointment, and filed his answer  
for them, and by consent the following  
decree is rendered, It is adjudged, ordered  
and decreed that the lands in the Bill  
and exhibits mentioned be partitioned between the Com-  
plainant and the other heirs of Jeremiah  
Scagg named in the Bill except Shelton and  
wife, they having sold and conveyed their  
interest to the Complainant, their share is to  
be laid out to him, Carr Bailey, David Cox,  
and John Reason are appointed Commissioners  
to make said partition, they are ordered to  
give to the parties, except Shelton and wife, rea-  
sonable notice of the time they will execute



1 this decree, after which they will proceed to  
2 divide the said lands in the Bill mentioned  
3 into seven equal lots or shares in value having  
4 due regard to quality and quantity, and when  
5 so divided they will then proceed to allot to  
6 Complainant one share, and to Martha Ann  
7 Burke one share, and to Polly Scaggs one share  
8 and to John Scaggs one share and to Minerva  
9 Scaggs one share, and to Rebecca Scaggs one  
10 share, and to Elizabeth Scaggs one share,  
11 It is agreed that Dixon S. Lutton has bought  
12 Complainant's interest and is entitled to his  
13 share, and that said Lutton owns other lands  
14 adjoining the lands to be partitioned therefore  
15 the said Commissioners are ordered to (if it  
16 can be done without prejudice to the other  
17 co-tenants) lay out the lot of the Complainant  
18 adjoining to the lands of the said Dixon S.  
19 Lutton, and if it can be done without preju-  
20 dice to the other heirs, the share of the youngest  
21 heir Elizabeth is to be laid out adjoining her  
22 mother's dower. The said Commissioners are re-  
23 quired to make a plain plat of the whole land  
24 divided, and also showing the several lots or  
25 shares herein required to be laid out, and  
26 the metes, and bounds thereof, and report  
27 plainly which of said lots are allotted to  
28 each tenant to which they may allot it.  
29 It is further adjudged, decreed and  
30 ordered that the Complainant's wife  
31 is entitled to receive of the Guardians  
32 John Scaggs, William Andre, and Samuel



Payse the one seventh part of the rents for  
which the lands rented for the years it has  
been rented since the complainant bought  
the share of Shelton and wife subject to a  
Credit, however, for one seventh of the necessary  
and needful repairs made by the Guardians  
thereon. It is, therefore, ordered and decreed  
that the said Commissioners, herein before  
named, after giving the parties herein before  
named, except Shelton and wife due notice, do  
proceed to ascertain in what year complain-  
ant bought the share of Shelton and wife, then  
ascertain what rents have fallen due on  
said lands since complainant bought  
said interest, and report the same, then they  
will ascertain and report what the Guar-  
dians have expended for necessary repairs  
to the said lands since the complainant  
bought the share of Shelton and wife, or if  
he bought it after it had been rented  
and before the rent fell due, and if any repairs  
were made in the year he bought it, after it  
was rented and before he bought it, to asc-  
ertain and report how much, to enable them to  
execute this Decree they have power given them  
to summon such witnesses as either party may  
require, or as they may think material, and  
to swear them and force them to give evidence tou-  
ching the premises, and they also have power  
to summon any one having any deed, or oth-  
er writing in his possession that is material  
and pertinent to produce before them the same.



and they hereby have power given to do all acts necessary to be done to enable them fully to discharge the duties herein required of them to be done, and this Cause is continued.

The ~~Commissioners~~ appointed by the foregoing Decree to partition the lands in the Bill mentioned between the Complainant and the other heirs of Jeremiah Scagg's named in the Bill, except Shelton & wife in the manner set forth in said decree, on the 19<sup>th</sup> of October 1868 filed their report and plat of the lands so divided, which report is in the words and figures following, to wit:—

Joel S. Lee  
Against

Jeff

} In Chancery

Jeremiah Scagg's Heirs et al's Defts.

Pursuant to an order of the County Court of Lee County rendered 21<sup>st</sup> August 1868 in the above named Cause the undersigned, who were appointed by said



Decree Commissioners  
For the purposes named  
in said decree, have  
executed said decree  
and beg leave to report.  
We have partitioned  
the land in the  
exhibits men-  
tioned in the  
complet



after  
in interest  
and said  
into seven  
value having  
and quantity and  
complaint for the  
Littre, who, it is a go-  
the complainants interest,  
to his share, one share which  
was assigned as Lot No. 1, Which is bounded  
as follows, to wit:- Beginning at a Beech and  
Hickory, Corner to said Littres land, and  
with lines thereof  $N 78^{\circ} W 53$  poles to a stake,  
thence due South one pole to a stake, thence  
 $N 76 \frac{1}{2} W 9 \frac{1}{2}$  poles to a stake in the road  
thence  $N 36^{\circ} E 66$  poles up a branch & dividing  
the same to a stake, thence  $N 64^{\circ} E 19$  poles to  
a stake in said road and with the same  $N 53^{\circ}$   
 $E 10$  poles to a stake and with the same  $S 60^{\circ} W$   
 $57 \frac{1}{2}$  poles, to the Beginning, containing 20 acres  
be the same more or less, See Fig 3, 4, 5, 33, 34, 35,  
25, 26, &c.

And we have allotted to Martha Ann Burde  
one share which is designated as Lot  
No 2<sup>d</sup> which lot No 2, is bounded as follows,  
to wit: Beginning at a stake, Corner to Lot  
No 3 and with lines thereof  $N 34^{\circ} W 57$  poles  
to a post on a flat, thence  $N 68 W 24$  poles  
to a stake, corner to Hobbs land & with lines  
of the same  $S 40 W 64$  poles to a white oak



thence  $70^{\circ}$  W 8 poles to a Stake Corner to lot No 4 & with a line thereof  $S 34^{\circ}$  E 140 poles to the Beginning, containing 16 acres be the same more or less, See Fig 27. 35. 25. 24. 17. 16. 28. 27. And we have allotted to Minerva Seaggs one share, which is designated as lot No 6, which is bounded as follows, to wit: - Beginning at a Stake on the Widows lower line & corner to lot No 7 & with a line of the latter  $N 35^{\circ}$  W 120 poles to a Stake on the locust tree line near the top of a Spur, thence with the said locust tree line  $S 55^{\circ}$  W 25 poles to a Stake near where Ab Whisman now lives, Corner to lot No 5 & with a line of the same  $S 35^{\circ}$  E 100 poles to a Stake Corner to lot No 5 & lot No 1 & with a line of the latter,  $S 40^{\circ}$  E 46 poles to a Stake on Dix on J. Littons line & with the same  $N 60^{\circ}$  E  $3\frac{1}{2}$  poles to a Stake, Corner to the said lower lands & with a line of the latter North 32 poles to the Beginning, containing 17 acres, be the same more or less See Fig 22. 23, 24, 25, 26, 2, 22. And we have allotted to Elizabeth Seaggs one share which is designated as lot No 7, which is bounded as follows, to wit: - Beginning at a Beech on the East Side of the Big Branch, Corner to the Widows lands, & with the lines thereof  $S 25^{\circ}$  E 16 poles to a Hickory Stump by said branch, thence  $N 48^{\circ}$  E 25 poles to a Beech, thence  $S 21^{\circ}$  E 46 poles to a Stake in the road where the Branch crosses the same, thence due South 42 poles to a Stake, corner to lot No 6 & with a line of the same  $N 35^{\circ}$  W 120 poles to a Stake near the top of



and the other heirs of Jeremiah Scaggs  
 named in the Bill, except Shelton and wife  
 having sold and conveyed their interest  
 complainant, we have divided said  
 the Bill mentioned into seven  
 or shares in value having  
 quantity and quality and  
 to complainant for the  
 Pittou, who, it is a gr-  
 complainants interest,  
 share which  
 is bounded  
 each and



1 Stump and Rock, thence S 24 E 9 1/2 poles to a stake,  
2 corner to Dixon & Littons land, and with lines  
3 thereof S 88° E 54 poles to a stake, thence S 76 1/2  
4 E 19 1/2 poles to a stake corner to lot No 1 & with  
5 a line thereof N 56° E 18 poles to the Beginning,  
6 containing 18 acres, be the same more or less,  
7 See Fig 31, 32, 9, 8, 7, 6, 35, 31, and in addition to the  
8 above we have allotted to the said Martha  
9 Ann Burke another piece of land which  
10 is represented by Fig 10, 11, 12, 14, 36, 10, and  
11 is bounded as follows, to wit: - Beginning at  
12 a Beech and Hickory, corner to lot No 3,  
13 and also corner to Hobbs land, and with  
14 the lines of the latter N 86 W 50 poles to a Hickory  
15 and maple N 51° W 80 poles to a stake corner  
16 to James Flanerys land and with a line  
17 thereof North 13 poles to a line near the Noel  
18 field on Dixon & Littons line & with the same  
19 S 57 E 60 poles to a chestnut & white oak, thence  
20 S 86° E. 76 poles to a stake, corner to lot No 3  
21 with a line of the same due South 13 poles to the  
22 Beginning, containing 9 acres, be the same more  
23 or less. And we have allotted to Pelly Seaggs  
24 one share which is designated, as lot No  
25 3, which is bounded as follows - to wit: Be-  
26 ginning at a stake corner to lot No 2, and  
27 on a line of lot No 1 & with the same N 36°  
28 E 26 poles to a stake, corner to lot No 4, and  
29 with a line of the same N 34 W 140 poles to a  
30 stake on Hobbs line & with lines thereof S 70  
31 W 7 1/2 poles to 3 poplars on a hill-side above  
32 the head of a spring N 86 W 30 poles to a stake



corner to part of lot No 2 & with a line of the  
same due South 13 poles to a Beech and Hickory  
corner to said Hobbs land & with a line of the  
same S  $57^{\circ}$  E 78 poles, to a stake, corner to lot No  
2 & with lines thereof S  $68^{\circ}$  E 24 poles to a poplar  
on a flat, thence S  $34^{\circ}$  E 57 poles to the Begin-  
ning, containing 38 acres, be the same more  
or less. See Fig 3, 30, 29, 15, 36, 10, 32, 31. And we  
have allotted to John Scagg's one share, which  
is designated as lot No 4, which is bounded  
as follows to wit: - Beginning at a stake, corner  
to lot No 3 and on a line of lot No 1 & with  
the same N  $56^{\circ}$  E 22 poles to a stake, thence  
N  $64^{\circ}$  E 3 poles to a stake, corner to lot No 5,  
& with a line of the same N  $34^{\circ}$  W 140 poles to  
a stake on Hobbs line & with the same S  $70^{\circ}$   
W 25 poles to a stake, corner to lot No 3  
& with a line of the same S  $34^{\circ}$  E 140 poles to the  
Beginning, containing 20 acres, be the same  
more or less. See Fig 30, 34, 27, 28, 29, 30. And  
We have allotted to Rebecca Scagg's one share  
which is designated as lot No 5, which is bou-  
nded as follows to wit: - Beginning at a stake,  
corner to lot No 4 & on a line of lot No 1 & with  
lines of the same N  $64^{\circ}$  E 16 poles to a stake, thence  
N  $53^{\circ}$  E 10 poles to a stake, corner to lot No 1  
& lot No 6 & with a line of the latter N  $35^{\circ}$  W  
100 poles to a stake on the Crabtree line near  
where Ab Whismann now lives & with said  
Crabtree line S  $55^{\circ}$  W 18 poles to a stake, corner  
to a survey made in the name of Hiram  
Davis & with lines thereof N  $45^{\circ}$  W 34 poles to a stake.



a Spur on the Crabtree line & with said line  
 N 55° E 115 poles to a Stake, corner to said  
 Widows lower lands & with a line of the same  
 S 46° 20' 95 poles to the Beginning, containing 24  
 acres, be the same more or less, See Fig 19. 20,  
 21, 1 a, 22, 23, 18, 19. There being no Spring  
 water on lots Nos 1, 2, 3 & 6, the owners or ten-  
 ants of said lots shall have the right and  
 privilege to use water as follows: - The owner  
 or tenants of lots N<sup>o</sup> 1 to use water from a  
 Spring on lot N<sup>o</sup> 4, where John Willis now  
 lives, and the owner or tenants of lots Nos 2 & 3  
 to use water from said Spring or a Spring that  
 that was assigned to Jeremiah Scaggs heirs  
 from William Hobbs Estate or both, and the  
 owner or tenants of lot N<sup>o</sup> 6, to use water from  
 a Spring on lot N<sup>o</sup> 5, near where Ab<sup>l</sup> Whisman  
 now lives. It being represented to us by good  
 Authority that Jeremiah Scaggs in his lifetime  
 purchased of Dixon Bittin small portions of  
 lots Nos 1 & 2, and that that he never obtained  
 legal title for the same, but the said Bittin ac-  
 knowledges that he sold him (Scaggs) the land  
 and received the purchase money for the same,  
 and we have taken this land into account in  
 the partition, and we consider it as rightfully  
 belonging to the said Jeremiah Scaggs Estate.  
 The portions thus purchased are represented  
 on the Diagram thus: From the point 4 a  
 straight line to 8 and around by 7, 6, 5, &  
 to 4 again, making two small triangles  
 they both coming to a point at the point 6.



The line as it originally ran between the  
said Reitter and said Scaggs ran straight  
from the point 4 to 8 or rather from 3 to 8. We  
are informed that there was no writing of any  
sort between the parties in relation to said  
land, and that it was merely a verbal  
contract between them, and in relation  
to the rents of the lands, we have ascertain-  
ed that the Jeff Cox, purchased the share  
of Shelton wife in the fall of 1866, and that  
the lands had been rented the first of  
March previous to that time, and that the  
rents of that year fell due on the first of  
March 1867, and that Shelton accepted the  
rents of that year (1866), and therefore the  
Plaintiff Cox is not entitled to any part  
of the rents of the land for that year, but  
that he is entitled to the seventh part of the  
rents of said land for the year 1867, and the  
present year (1868), and we have ascertained  
that the rents of said lands for the year 1867  
amounted to \$195.31, and the needful and  
necessary repairs made by the Guardian  
John Scaggs for that year amounted to  
\$18.35, which leaves a balance due for  
that year of \$176.96, which amount fell  
due on the first of March 1868, one seventh  
part of which would be \$25.28, which would  
be the Plaintiff's part of the rents for that  
year (1867), and we have ascertained that  
the rents of said land for the present  
year (1868) amount to \$110.00, which amount



will fall due the first day of march  
next 1869, one seventh part of which would  
amount to \$15.71, making the amount off \$40.99  
for the two years rents that the plaintiff boy  
would be entitled to as his part of said rents  
\$25.28 of which was due the first day of march  
1868, and the balance off \$15.71, will fall due  
the first day of march 1869. It appears that  
the Guardian John Scagg has had entire  
control of the lands up to the present time and  
that the Guardian Andis and Burke have  
had nothing to do with renting the said lands  
and that the matter is all in the hands of said  
Scagg. See of which is respectfully subm-  
itted

Carroll Bailey Surveyor <sup>\$2.34</sup> (Signed) Carr Bailey.  
John Reesor 5- " \$10.00 ( " ) David Cox } commissioners  
David Cox " " \$10.00 ( " ) John Reesor }  
Archibald Shuler chain carrier \$1.00  
Thomas Andis " " \$1.00  
Ab Whisman " " \$1.00  
Virginia

At a county Court continued and  
held for Lee County, at the Courthouse thereof,  
on Tuesday, January 19th 1869.

Jess S. Cox Plaintiff

against

Jeremiah Scagg, Heirs et als Defendants

This Cause came on to be heard on the Bill  
and Exhibits, former decree of the court  
and Commissioners report, and being argued  
by Counsel, and the Court being sufficiently

} In chancery



advised now finally decrees and orders.  
It appears to the satisfaction of the Court that  
the Commissioners appointed by a former  
decree of the Court to divide the lands of  
Jeremiah Scagg deceased among his heirs,  
and to take an account of rents and improvements,  
have made a division & allotment amongst  
& to those entitled thereto and has taken said  
account, a report of which they filed on the  
19th of October 1868, and no exceptions having  
been taken or filed thereto, the action of said  
Commissioners in the premises is approved by  
this Court and their report confirmed. It is now  
finally adjudged & decreed that Dixon S.  
Littor take and hold in severally the lot  
of the said land laid out and allotted to  
him, it being the part owned by Sheltan &  
wife, and conveyed by them to the complainant  
& by him conveyed to the said Dixon S. Littor  
& by his order decreed & allotted to said Littor.  
It is further adjudged and decreed that  
Martha Ann Burs take and hold in severally,  
with all and singular the appurtenances,  
the lot of said land laid out to her, and it  
is adjudged and decreed that Polly Scagg  
take and hold in severally the lot of land  
laid off & allotted to her, with all its appurte-  
nances, and that John Scagg take and  
hold in severally the lot of land laid out  
and allotted to him with its appurtenances,  
and that Minerva Scagg take and hold  
in severally the lot of land laid out and



+ allotted to her with its appurtenances  
 and that Rebecca Scagg take and hold in  
 severally the lot of land laid out and allotted  
 to her with its appurtenances, and that Elizabeth  
 Scagg take and hold in severally, the lot of  
 land laid out and allotted to her. It is further  
 adjudged, decreed, and ordered that the Com-  
 plainant Recover of John Scagg, Guardian  
 &c, but for the use of Wm or S. Linton \$40.99, ~~that~~  
~~being the one seventh of the profits for 1867~~  
~~& 1868.~~ after deducting the one seventh  
 of the value of the improvements \$25.28 of said  
 sum of \$40.99 is to bear interest from the 1<sup>st</sup>  
 day of March 1868, and for which the said  
 Debt for the use of said Linton may have ex-  
 ecution - and \$15.71 of said sum of \$40.99 is  
 to bear interest from the 1<sup>st</sup> day of March  
 1869, after which time Execution may  
 issue therefor, if not paid. It is further ad-  
 judged, decreed, and ordered that the Clerk  
 of this Court, tax the costs herein, which the  
 said parties are ordered to pay in due and  
 equal proportions, that is, each one of the  
 parties owning a share of said land  
 divided is to pay one seventh part of the  
 costs & expenses of this suit & division of said  
 land, the parties are hence dismissed &  
 this Cause is stricken from the Docket

A Copy Test: S. F. Richmond  
 Clerk



Joel S. Cox (4th)  
& Copy.  
no. 23  
Expenses and  
Commo Report  
Jeremiah Skaggs

" C "

Q5375



DSB 28  
P 571

This Deed made the 2<sup>nd</sup> Day of September  
in the year 1878 between Dixon S. Lutton  
and Maria H. Lutton his wife of the County  
of Lee and the State of Virginia of the one part  
and Robert E. Lutton of the County and State  
aforesaid of the other part. Witnesseth that  
for and in consideration of the sum of three  
thousand dollars in hand paid the receipt  
whereof is hereby acknowledged the said  
Dixon S. Lutton and Maria H. Lutton his  
wife do grant bargain and sell unto the  
said Robert E. Lutton a certain tract or  
parcel of land lying and being in the said  
County of Lee in Yorkum Station and bound-  
ed as follows to wit. Beginning at an ash  
an rock corner to the old Wynn land  
corner to S. W. Young land and with the  
said Wynn line N 23 1/2° W 168 1/2° poles  
to a rock on the north side of the wagon road  
7 1/2 poles from a large white oak stump one  
of the original corner to said Wynn land  
thence S 58° E 54 poles to a rock thence S  
76 1/2° E 40 poles to a rock at the fork of  
the road thence N 57° E 66 poles to a rock  
thence N 64° E 19 poles to a rock thence N  
53° E 10 poles to a rock in the middle of the  
wagon road thence leaving said road S.  
40° E 46 poles to a rock in the old Wynn  
line thence S 61° W 26 poles to a rock corner  
to A. D. Luttons land and with a line thereof  
S 23° E 116 poles to a rock on the old Wynn  
line and with the same S 64° W 144 poles to the



1 Beginning containing 144 1/2 acres be the same  
2 more or less. And also one undivided half  
3 of the home place of the said Dickson S. Lutton  
4 with the said Dickson S. Lutton advances  
5 to the said Robert E. Lutton at the price of  
6 twenty seven hundred dollars said und-  
7 ived half of said home place which home  
8 place includes the Hampton place of two  
9 hundred and fifty acres more or less the Silas  
10 Flanary place of forty acres more or less  
11 And an entry of 40 acres on Stockers Knob  
12 made in the name of the said D. S. Lutton  
13 all the tracts adjoining making in the whole  
14 home place 330 be the same more or less.  
15 One half of which the said Dixon S. Lutton  
16 and Lavina H. Lutton his wife convey unto  
17 the said Robert E. Lutton including one half  
18 of all the buildings and one half of all the as-  
19 tenances thereunto belonging. And the said  
20 Dixon S. Lutton and Lavina H. Lutton his wife  
21 covenant with the said Robert E. Lutton that they  
22 will warrant generally the lands hereby con-  
23 veyed. Witness the following signatures and  
24 seals.

25 Dixon S. Lutton Seal

26 Lavina H. Lutton Seal  
mark

27 State of Virginia County of Lee, to wit:

28 I Carr Bailey a Notary Public  
29 for the County aforesaid in the State of Virg-  
30 inia do Certify that Dixon S. Lutton and Lavi-  
31 na H. Lutton his wife whose names are signed  
32 to the Writing hereto annexed bearing date on



1 the 2<sup>nd</sup> day of September 1878, have ack-  
2 nowledged the same before me in the County  
3 aforesaid. The said Leovina H. Rittou being  
4 examined by me privily and apart from  
5 her said husband and having the writing  
6 aforesaid fully explained to her she the  
7 said Leovina H. Rittou acknowledged said  
8 Writing to be her act and deed and declared  
9 that she had willingly executed the same  
10 and does not wish to retract it. Given under  
11 my hand this September 2<sup>nd</sup> 1878

12 Carver Bailey N.P.  
13 Virginia: Reel County to wit:

14 In the office of the clerk  
15 of the said County the 26<sup>th</sup> day of Aug 1893  
16 this Deed was presented and together with  
17 the certificate of acknowledgment thereto  
18 annexed was admitted to record

19 Teste: S. V. F. Richmond Clerk  
20 A Copy- Teste: S. V. F. Richmond Clerk  
21  
22  
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32



Alison S. Little & wife

4 D 4

285



DB 28  
P 574

This Deed made and entered into this the 4<sup>th</sup>  
day of April 1893 by and between D. S.  
Lutton and Lavina D. Lutton his wife  
of the first part and R. E. Lutton of the second  
part all of the County of Lee and State of  
Virginia Witnesses that for and in con-  
sideration of the Eight thousand eight hundred  
+ Eighty Dollars and twenty seven hundred  
Dollars as an advancement in hand paid  
the receipt of which is hereby acknowledged  
We the said party of the first doth bargain  
sell and grant to the said party of the second part  
with Covenants of General Warranty a certain  
parcel of Land rather in two divisions situate  
in Lee County and in Gosport Station Man-  
gisterial District and on what is known  
as Stockers Knob and Wallens ridge and Valley  
between on either side of Camp Branch, Contain-  
ing by Survey made at this date by  
surface measurement Eight hundred  
and sixty six acres be the same more or less  
and bounded as follows to wit Beginning  
of first piece or parcel on a planted  
rock on the North side of the public road  
corner with William Stout thence with the  
road and said Stouts line S 86 1/4 E  
54 poles to a planted rock S 75 1/4 E 20 poles  
+ 4 links by an 80 link chain 40 links  
for one half chain or two poles. N 58 1/2  
E 67 poles to a planted rock N 65 E 19  
poles and 8 links to a planted rock N 53 1/2  
E 10 poles and 8 links to a planted rock in the



1 middle of said road thence leaving said  
2 road S  $37\frac{3}{4}$  E 46 poles &  $7\frac{1}{2}$  links to a planted  
3 rock corner of A. D. Ditton and thence with  
4 his lines S  $61\frac{1}{2}$  W 26 poles to a planted rock  
5 thence S  $21\frac{1}{2}$  E 115 poles and 9 links to a planted  
6 rock on what is known as the Wynn line thence  
7 N 64 E  $72\frac{1}{2}$  poles & 6 links to a stake and planted  
8 rock thence S 19 E 137 poles to a stake now but  
9 will be a planted rock thence S 60 E 30 poles  
10 & 10 links crossing a branch to a planted  
11 rock now a stake agreed by said R. E.  
12 Ditton & A. D. Ditton, thence up the branch S  
13  $2\frac{1}{4}$  W 7 poles &  $1\frac{1}{2}$  links to a stake below  
14 a spring thence crossing said branch S  
15  $66\frac{3}{4}$  W  $2\frac{1}{2}$  poles &  $9\frac{1}{2}$  links to a stake  
16 thence S  $5\frac{3}{4}$  E 17 links to a stake thence S  
17  $47\frac{1}{2}$  W 18 poles &  $8\frac{1}{2}$  links to a stake, thence  
18 S 15 E 111 poles & 6 links to a chestnut oak  
19 and small Black oak on top of Wallus  
20 ridge thence leaving said A. D. Dittons line  
21 and with the top of said ridge and me-  
22 anders N  $72\frac{1}{2}$  W  $8\frac{1}{2}$  poles S 86 W 8 poles & 5  
23 links S  $76\frac{1}{4}$  W  $14\frac{1}{4}$  poles S 86 W 3 poles N 66 W  
24 8 poles S 72 W 8 poles S  $46\frac{1}{2}$  W  $51\frac{1}{2}$  poles S 74  
25 W 12 poles S 50 W 6 poles S  $76\frac{1}{2}$  W 6 poles, S  
26 56 W 4 poles S 83 W 6 poles N 69  $\frac{1}{2}$  W 16 poles  
27 S  $67\frac{1}{2}$  W 6 poles S 46 W 7 poles S  $84\frac{1}{2}$  W 11 poles  
28 S  $57\frac{1}{2}$  W 14 poles S  $73\frac{1}{2}$  W 6 poles N  $81\frac{1}{2}$  W  
29 6 poles to a stake, near a rock chipped out of  
30 of said ridge thence leaving the top of said  
31 ridge and passing over a bluff of rock  
32 N  $44\frac{3}{4}$  W 30 poles & 2 links to a stake and



1 planted rock near a small ash thence  
2 N  $11\frac{1}{2}$  W  $72\frac{1}{2}$  poles & 4 links to a large su-  
3 gar tree on the south side of the Cove Lady  
4 Gap Road thence N  $11$  W  $65$  poles to a large  
5 buckeye thence N  $25\frac{1}{2}$  W  $36$  poles &  $4\frac{1}{2}$   
6 links to a planted rock in place of a sugar  
7 tree now down N  $41\frac{1}{2}$  W  $57\frac{3}{4}$  to a planted  
8 rock on the Wym line thence S  $64\frac{1}{2}$  W  $44$  poles  
9 & 1 link & 1 inch to a stake and planted  
10 rock near an ash one of the original trees  
11 called for in the original papers and now  
12 corner of Harve Young thence N  $23$  W  $189\frac{1}{2}$   
13 & 2 inches to the beginning this plat of land  
14 contains four hundred & twenty nine acres  
15 And with this plat of land the spring on  
16 the north side of Wallus ridge and enclosed  
17 in a plat of land deeded by the vendors  
18 of this conveyance to A. D. Lutton but mentioned  
19 in said deed that R. E. Lutton free and equal  
20 ual rights to said spring with A. D. Lutton  
21 and it is further provided that neither A. D.  
22 Lutton nor R. E. Lutton are to sell or any way  
23 in cumber his land so as to deprive the  
24 other of full and free access to and use  
25 of said spring and further the said A. D.  
26 Lutton & R. E. Lutton are to erect a fence or  
27 fence substantially around said spring  
28 so as to protect it from stock and it is fur-  
29 ther provided that neither of said parties  
30 their heirs or assigns shall ever at any time  
31 by pipes or in any other way convey from  
32 said spring more than one half of said



1 water so as to deprive the other from his  
2 half of said water. And further to this  
3 plat of land is granted w right of way  
4 to the Spring where William Stout now  
5 lives and for full and satisfactory evi-  
6 dence of said inference is hereby made  
7 to the Commissioners Report in the par-  
8 tition of the Estate of Jeremiah Seaggs decd  
9 which right of way was reserved by  
10 Fleming Shulton and Sarah J. Shulton,  
11 and conveyed by them to Joel S. Gay  
12 and from Joel S. Gay to D. S. Pittou the vendors  
13 of this conveyance. The other plat of land  
14 of land containing four hundred &  
15 thirty seven acres more or less, and  
16 adjoining the other plat of land on the  
17 crossing line near the road and on a corner  
18 with William Stout, Beginning at a place  
19 where there was a large white oak called  
20 for in original papers, but now a planted  
21 post thence S 23 E 10 poles & 4 links passing  
22 the Beginning corner of the first named  
23 tract at 9 1/2 poles, & 2 links to the center  
24 of the road thence South West at  
25 right angles 10 ft thence S 23 E 8 1/2 poles  
26 & 2 links to Camp Branch thence down  
27 said branch as it meanders S 84 1/4 W 6  
28 poles & 4 links N 3 7 W 3 1/2 poles  
29 S 62 1/2 W 10 poles & 12 links S 67 1/2 W 7 poles  
30 & 6 links S 63 3/4 W 9 poles & 15 links N 53 3/4  
31 W 6 poles & 6 links S 79 3/4 W 2 poles S 26  
32 W 11 poles S 53 1/2 W 3 poles & 10 links N 72 3/4



206 poles to a stake in the center of said  
 branch thence leaving said branch S 22  
 E 30 poles to a stake and planted rock  
 S 66  $\frac{3}{4}$  W 57 poles +  $1\frac{1}{2}$  links to a stake +  
 planted rock S 22 E 31 poles to a stake  
 and rock at the North side of the cow road  
 or turnpike thence with said road S 75  $\frac{3}{4}$   
 W 53 poles + 9 links to the Flanary line as we now  
 measure, but if it be more or less it is to go  
 to the Flanary line thence with the same N 55-  
 W 55  $\frac{1}{2}$  poles +  $3\frac{1}{2}$  links to Flanary's corner near  
 the deep spring as we now measure but ~~it~~  
 should it prove otherwise this line is to be  
 with Flanary's line and corner with Flanary's  
 at or near the deep spring thence so as to divide  
 the spring and up the said Camp Branch  
 as it meanders and in the center of said  
 branch N 22  $\frac{1}{4}$  E 6 poles S 87 E 1 pole S 71 E  
 2 poles S 35 E 6 poles N 60 E 3 poles S 71 E 4  $\frac{1}{2}$  N 8 E 3  $\frac{3}{4}$   
 poles N 42  $\frac{3}{4}$  E 2 poles S 30 E 2 poles S 17 E 4  $\frac{1}{2}$  poles  
 East  $1\frac{1}{2}$  poles + 4 links N 30 E 3  $\frac{1}{2}$  poles N 4  $\frac{1}{2}$  W 4  
 poles N 56  $\frac{1}{2}$  E 3 poles N 85  $\frac{1}{2}$  E 10 poles N 40 E 6  $\frac{1}{2}$   
 poles + 6 links N 85 E 4 poles N 43 E 4  $\frac{1}{2}$  poles N  
 56  $\frac{1}{2}$  E 12  $\frac{1}{2}$  poles S 83 E 10  $\frac{1}{2}$  poles + 3 links N 53  
 E 4 poles N 6  $\frac{1}{2}$  W 7 poles N 57  $\frac{1}{4}$  W 6  $\frac{1}{2}$  poles N  
 56  $\frac{3}{4}$  E 6  $\frac{1}{2}$  poles N 66 E 9 poles N 49 E 7 poles S  
 80 E 4  $\frac{1}{2}$  S 26  $\frac{1}{2}$  E 5 poles N 74  $\frac{1}{2}$  E 5 poles S 84  $\frac{1}{2}$   
 E 6 poles S 24 E 2 poles S 46 W 2 poles S 15  $\frac{1}{2}$  E  
 3 poles N 77  $\frac{3}{4}$  E 2 poles N 18  $\frac{1}{2}$  E 5  $\frac{1}{2}$  poles N  
 34  $\frac{1}{2}$  E 4 poles N 54 E 2 poles S 20  $\frac{1}{2}$  E 1  $\frac{1}{2}$  poles  
 N 65 E 3 poles to a stake in the center of said  
 branch thence leaving said branch N 12  $\frac{1}{4}$



1 W 52 poles & 8 links to a stake and planted  
2 rock on the South Side of the public road  
3 thence N  $17\frac{3}{4}$  W 22 poles &  $3\frac{1}{2}$  links to a planted  
4 rock S 20 W 20 poles to a planted rock S  $16\frac{3}{4}$   
5 E 23 poles to a planted rock S 72 W 1 poles to the  
6 Center of said road thence with said road  
7 N  $41\frac{1}{2}$  W 4 poles & 10 links N  $86\frac{1}{4}$  W 30 poles N  $85\frac{1}{2}$   
8 W 6 poles & 12 links S  $82\frac{1}{2}$  W 8 poles N  $87\frac{1}{4}$  W 2  
9 poles & 16 links to a planted rock on the South  
10 Side of said road and corner to the Flannery  
11 land and with a line thereof N  $58\frac{1}{4}$  W  
12 102 poles & 8 links to a white oak corner of  
13 James Flannery and with his line N  $30\frac{1}{4}$   
14 E 134 poles to a planted rock and stake  
15 S 45 E 8 poles & 8 links to a stake and planted  
16 rock N  $42$  E 13 poles to a stake and planted  
17 rock on a rise in about 2 poles of a gum  
18 thence N  $49$  W  $64\frac{1}{2}$  poles to a stake and planted  
19 rock on top of a spur and corner of D. S.  
20 Lutton the Vendor of this conveyance and thence  
21 up said spur and with said Luttons line  
22 N  $35$  E 25 poles to a chestnut oak N  $28\frac{1}{2}$   
23 E 22 poles to a walnut, Black oak & small  
24 hickory on top of Stockers Knob thence  
25 down the said Knob on the North Side  
26 N  $7$  E 34 poles & 13 links to a stake and rock  
27 on the north line of the William Hobb Survey  
28 of 450 acres thence with a line thereof N  $89\frac{3}{4}$   
29 E  $247\frac{1}{2}$  poles to frontiers corner of Francis  
30 Willis and with a line thereof S  $1\frac{1}{2}$  W  $157\frac{1}{2}$   
31 poles to a white oak passing Willis corner  
32 at  $127\frac{1}{2}$  poles on top of spur and 30 poles



1 of said line is with a line of William  
2 Stouts and also corners on said Stouts land  
3 and with his line as was agreed by said  
4 D. S. Lutton and said William Stout 189 1/4 N  
5 86 poles lacking 2 links to a stake and plant-  
6 ed rock thence S 20 1/4 E 82 poles to a stake  
7 and planted rock near a beech oak thence  
8 S 38 20 38 poles & 1 1/2 links to the Beginning.  
9 And said D. S. Lutton and Ravina H. Lutton  
10 his wife doth Covenant and agree to  
11 and with the said R. E. Lutton that they  
12 are lawfully seized of said premises, and  
13 have a good right to convey and that said  
14 premises is clear of any encumbrances  
15 whatever and that they will warrant  
16 and forever defend the title herein con-  
17 veyed to the said R. E. Lutton to him and  
18 his heirs executors or assigns forever.  
19 In witness whereof we have here unto  
20 signed and sealed this Instrument as  
21 our free act and deed Day and  
22 date above written.

23 D. S. Lutton Seal

24 Ravina her H. Lutton Seal

25 State of Va 3  
26 Lee County 3

27 I ~~ma~~ M. Tate a Notary Public of  
28 said County do Certify that D. S. Lutton  
29 and Ravina H. Lutton whose names  
30 are signed to the foregoing deed of convey-  
31 ance as vendors personally came before me  
32 in my county and acknowledged their



Signatures to be their act and deed for  
the purpose set forth therein Given  
under my official signature April 7<sup>th</sup> 1893  
Jas M. Tate NP

Im M. Gate NP

Virginia Bell County to wit:

In the Office of the clerk of  
the said County the 26<sup>th</sup> day of Aug 1893  
this deed was presented and together with  
the Certificate of acknowledgment thereto  
annexed was admitted to record

Testo: S. V. F. R. i. Chumard Cerru

R. E. Cotton 6th

True Copy

Reed

Queen S. Sutton-King

3

175



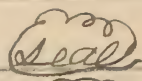
This deed made the 2<sup>nd</sup> day of November 1826  
 between Henry Miller & Mary C. his wife, of  
 the county of Lee & State of Virginia of the one  
 part, and William L. Stout of the county & state  
 aforesaid of the other part, Witnesses &c &c  
 for and in consideration of the sum of seven  
 hundred dollars in hand paid and secured  
 to be paid the receipt whereof is hereby  
 acknowledged, the said Henry Miller  
 and Mary C. his wife do grant, bargain  
 and sell unto the said William L. Stout  
 the whole of three certain tracts or parcels  
 of land, lying and being in the said  
 County of Lee and in York State  
 viz being part of the land of Jeremiah  
 Hagggs deceased, one tract or parcel  
 of land being the same that was laid off  
 and assigned to the said Mary Miller  
 formerly Hagggs, out of the land of the said  
 Jeremiah Hagggs deceased, by Commissioners  
 appointed by the Circuit of Lee County,  
 which is bounded as follows, to wit: Begin-  
 ning at a stake corner to lot No 2, and  
 on a line of lot No 1, and with the same  
 N. 56 E 26 poles to a stake corner to  
 lot No 4, and with a line of the same  
 N 34 W 140 poles to a stake on Hobbs  
 line, and with lines thereof S 70 20 22  
 poles to three poplars on a hill side above  
 the head of a spring, N 86. 20 30 poles to a  
 stake corner to part of lot No 2, and with  
 a line of the same due South 13 poles to a beech

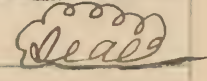


and hickory, corner to Hobbs land, and  
 with a line of the same S 51 E 78 poles to a  
 stake corner to lot No 2, and with lines  
 thereof S 68 E 24 poles to a yoplar or a  
 flat, thence S 34 E 57 poles to the Beginning,  
 containing 38 acres be the same more or less,  
 This tract or lot of land is marked on the  
 partition of the land of the said Jeremiah  
 Skaggs decd as lot No 3, And another tract,  
 or parcel of land, being the same tract or lot  
 of land laid off and assigned to John B. F. Skaggs  
 by said Commissioners out of the land of said  
 Jeremiah Skaggs decd, and deeded by  
 said John B. F. Skaggs to said Henry Miller,  
 said lot is marked in said partition as  
 lot No 4, and adjoins the above named  
 lot, which boundaries may be ascertained  
 by reference to the Commissioners report  
 of said partition, which report is on  
 record in the Clerks office of the County  
 Court of Lee County, which lot contains  
 20 acres be the same more or less. And  
 one other tract or lot of land adjoining  
 the last named lot of land, which lot  
 is marked in said partition as lot  
 No 5, and which lot of land was laid  
 off and assigned by Commissioners to  
 Rebecca Skaggs now the wife of Edward  
 M. Russell and deeded by said Russell and  
 wife to said Henry Miller, and bounded  
 as follows, Beginning on a stake  
 corner to lot No 4, and on a line of lot



No 1, and with lines of the same N 64 E 16  
poles to a stake, thence N 53 E 10 poles to a  
stake corner to lot No 1 and lot No 6  
with a line of the latter N 35 W 100 poles  
to a stake on the Hobbs line near the Ab  
Whisman or lead Bush House. then with  
said Hobbs line S 65 W 18 poles to a stake, corner  
to a survey made in the name of Hiram Davis  
and with lines thereof N 45 W 34 poles to a  
stake, thence S 76 W 8 poles to a stake, corner  
to lot No 4, and with lines thereof S 34 E 140  
poles to the Beginning, Containing 16 acres  
be the same more or less. And the said Henry  
Miller and Mary L. his wife Covenant with  
the said William R. Stout that they will war-  
rant generally the land hereby conveyed,  
Witness the following signatures and seals,  
The vendors lien is retained on said land  
till the purchase money is fully paid.

Henry Miller 

Mary L. Miller 

State of Virginia, County of Lee, to wit:—

I, Leora Bailey a Notary Public for the  
County aforesaid, in the State of Virginia  
do certify that Henry Miller and Mary  
L. Miller the wife of said Henry Miller whose  
names are signed to the writing hereto annexed  
bearing date on the 7th day of November  
1876. have acknowledged the same before  
me in ~~my~~ <sup>the</sup> County aforesaid. And the said  
Mary L. Miller being examined by me privately  
and apart from her husband and having



the Writing aforesaid fully explained to her  
she, the said Mary Miller, acknowledged said  
Writing to be her act and deed and declared  
that she had willingly executed the same, and  
does not wish to retract it, Given under  
my hand this November 7th 1876.

Leas Bailey Notary

Virginia Bee County Court Clerk's Office, March  
29th 1881. The foregoing deed bearing date  
on the 7th day of November 1876 from  
Henry Miller and Mary C. his wife to William  
C. Stout, all of Bee County Virginia, was this  
admitted to record upon the Certificate  
of Leas Bailey, Notary Public for  
Bee County Virginia.

Teste: John C. Orr, D.C.

A Copy - Teste: J. F. Richmond, Clerk

Wm C. Stout 14  
Truly Copy Deed

Henry Miller wife

273 19 3/4

28.00



KNOW ALL MEN BY THESE PRESENTS, That we

*A. W. Conk*  
are held and firmly bound unto the Commonwealth of Virginia, in the sum of *three*

*hundred* dollars, to the payment whereof, well and truly

to be made to the said Commonwealth of Virginia, we bind ourselves and each of us, our  
and each of our heirs, executors and administrators, jointly and severally, firmly by these  
presents, hereby waiving the benefit of our homestead exemptions as to this obligation,  
and any claim, right, or privilege to discharge any liability arising under this bond, or by  
virtue of said office or trust, in any currency, funds, counter claims or offsets other than  
legal-tender currency of United States. Sealed with our seals, and dated *the 16<sup>th</sup>* day  
of *May 1894*, one thousand eight hundred and

the Condition of The Above Obligation is Such, That whereas the above bound *R. E. Lutton*

on

*a* bill in Chancery against *Ira Baker*

addressed to the Judge of the circuit court of the county of Lee, has obtained from the said  
Judge an injunction to injoin and restrain *the said Ira Baker, his ser-  
vants, employees and agents from threatening,  
or in any way interfering with the said R. E. Lutton or  
his tenants of Lot no 1, in the said well mentioned, as he is called  
Spring on Lot no 4 mentioned in the said bill, and to take said Baker his  
agents servants and employees and they are enjoined from entering the door  
until the future order of the said court; and whereas it is provided, by the order of the said  
Judge awarding the said injunction, that the plaintiff shall not have the benefit thereof until  
*he*, or some one for *him*, shall enter into a*

bond, with good security, in the clerk's of of the said court, payable to the Commonwealth  
of Virginia, in the penalty of *three hundred*

Dollars, and conditioned to pay all such costs as may be awarded against the said plaintiff,  
and all such damages as shall be incurred in case the said injunction be dissolved. Now,  
therefore, if the said *R. E. Lutton or some one for him* shall pay all such costs as  
may be awarded against *him*, and all such damages as shall be incurred in  
case the said injunction be dissolved, then this obligation to be void, or else to remain in  
full force and virtue.

Executed in the presence of

*R. E. Lutton* (SEAL.)  
*A. W. Conk* (SEAL.)  
(SEAL.)

In the Clerk's Office of the Circuit Court of the County of Lee *A. B. Munsiey*  
This day personally appeared before me *S. A. G. Hyatt*, clerk of the circuit court of  
the county of Lee *Virginia R. E. Lutton and A. W. Conk*  
and made oath that *their* estate, after the payment of all *their* just debts, and  
those for which he *they* bound as security for others and expect to pay, *is*  
worth the sum of *three hundred* dollars,  
over and above exemptions allowed by law.

Given under my hand this *16<sup>th</sup>* day of *May* 1894

Teste:

*S. A. G. Hyatt* Clerk.  
for *A. B. Munsiey* clerk.



R. E. Sutton (8th)  
vs { Depunctate 8th  
Bonds.  
Isaac Baker.

Filed May 16<sup>th</sup> 1874

A. A. B. Mursey clerk  
by S. T. F. Richmond  
DC



Received of A B Munsey \$ 19.84 nine-  
teen dollars & eighty four Cents The legal  
attorneys <sup>and witness costs for plaintiffs,</sup> Fee in the Chancery Cause  
of R C Litton against Ira Baker  
~~also~~ this the 18th day of March 1895-  
B H Sewell, atty  
for Plaintiff



B H Sewell  
Receipt for  
costs  
A B Munsey



Received of A. B. Munsey Clerk  
Eight dollars & fifty cents. in full  
of my costs, in the Case of R. E. Pittou  
vs Ira Barker. This March 18th 1895.  
J. W. Richmond Clerk



S. W. F. Richmond

Recpt for costs



Questions asked by Litterer  
Counsel

R. E. Litterer  
vs  
Ira Baker et al. } per Chauncy

Questions by Plaintiff in  
above case, to be asked the  
witness W. L. Stout.

1 State whether or not you told Mr  
Ira Baker before <sup>you</sup> sold him your  
lands or farm mentioned in this  
case, or at the time of the sale,  
that R. E. Litterer the plaintiff  
had a water right to the  
Spring on lot no. 4, in controversy  
in this case,

" 2. Did you not tell said Baker  
that the plaintiff had a water  
right to said spring before  
~~you~~ <sup>he</sup> paid you any or  
all of the purchase money  
for said land,

Bullitt Howell  
Atty for Plaintiff



For Letter



2  
Purchaser is bound to take notice of all recitals in chain of title through which his own title is derived. Not only is he bound by everything stated in the several conveyances constituting that chain but he is bound fully to investigate and explore everything to which his attention is thereby directed. This is constructive notice and cannot therefore be rebutted."

16 A. & E. C. p <sup>798</sup> 800 citing numerous decisions.

"In all cases where a purchaser cannot make out a title but by a deed which leads him to another fact, whether by description of the parties, recited or otherwise, he will be deemed conversant thereof for it was crassa negligentia that he sought not after it; and for the same reason if a purchaser has notice of a deed he is bound by all its contents."

2 Angles Herdons  
bottom p 775 (over)



Defendant admits notice  
of the partition but claims  
nevertheless that he had  
no notice of the secret.  
He only saw a part of  
it !!

D. C. Yellow

vs. } Being for  
Plff.

Dr. Bader



Litter

v

Baker.

This is a controversy in reference, to the use of water from a spring.

To understand the Contention of each party we must remember—

1 That Jeremiah Scagg late of this County died seized of a tract of land in the County of Lee, in Gorum Station, and near Turkey Cove. This land descended to several children and heirs at law—D. S. Litter purchased out one of these heirs, after which there was partition, and lot No 1 was assigned to him, and in the report of the Commissioners this language is used in the assignment of Lot No 1, to said Litter. "There being no spring water on lots Nos. 1, 2, 3 & 6, the owners of ~~them these lots~~ or tenants of said lots shall have the right and privilege to use water as follows: "X X "The owner. or tenants of lot No 1, to use water from a spring on lot No 4 where



where John Willis now lives"  
Litten afterwards conveyed this lot  
to the plaintiff, and some ten years  
after that the water claim -

Some 15 or 18 years ago Wm L. Stent  
purchased lot No 4 from Henry  
Miller & wife the owners thereof.  
and occupied it until the fall of  
1893 when he sold to Baker.

A leading inquiry in this case is  
is a man under the legal duty  
of examining the titles of other lands  
than those he seeks to purchase.  
We maintain not.

See Blairburne v Hull and 88 Va 1046

And we maintain further that  
after the partition each lot was a  
separate & distinct holding not  
so connected with the partition  
proceedings as to require an  
examination of each lot but



only the one sold. If lot No 4 had been charged with the easement then the purchaser was bound to take notice of it.

This partition hereunder was made in 1868, under the Code of 1860, and the laws then in force. And there was no law authorizing the recording of such proceedings, nor did it pass title and so its recording being unauthorized by law was not constructive notice 75 Va 495 and case then cited. 86 Va 67, and the effect of improperly recorded instruments is fully discussed in the case Corey v. Moore 86 Va 871 especially on Pages 733; 734.

It is submitted therefore that said partition proceedings conferred no legal seizure, was not required or authorized by law to be recorded; they gave no constructive notice, and therefore a purchaser of lot No 4 was not bound to look to them



If however the needer of lot  
no 4 were bound to look to  
them, it is submitted the water  
claim is void for uncertainty.  
and cannot be enforced, a  
stronger case than this was so  
held in Butcher v. Greul, 111  
9<sup>th</sup> Gratt, 201.

And that reservations must be  
as certain as steel, themselves  
see ~~Wharburn~~ Wharburn on  
Real property Vol. 3 P. 431 -  
side fig 5-7. P. 432, 433, 439 -

Lomax, Vol. 2 page 214 fig 26 margin  
What is lot number one  
entitled to take? water for what?  
and for how many? and can  
the owner and tenant send their  
agents & employees for the same?  
We submit that the language  
used in the report is so vague  
uncertain and inartistic, no  
Court - can define & limit the  
right of the parties - But if it  
means anything does mean that  
owners & tenants of lot no one  
must go personally after it &  
only use it on lot no 1 or may they



5 . . .  
their other lands & farms under  
the privilege.

But the plff asserts that he and  
those under whom he claims they  
had possession of this right open  
adverses & Continuous.

Yet there is not a line of proof  
to show that they have ever  
done more than in the heat of  
summer send their work hands  
and tenants to get water, mostly  
from a pump or by drent &  
not from the spring by & with  
the Consent of Stent under his  
leave & license; and not until  
1891, did the plaintiff or his  
vender ever call Stent atten-  
tion, to the fact that they asserted  
such right, he denied it - re-  
fused them the privilege for tenants  
not on lot no 1, and they the  
plff submitted & there that matter  
ended. Now it was this dis-  
pute & Contentious and its investigation  
no doubt that gave rise to the  
conveyance of this water right  
so called by D.S. to R.E. Litten in 1893



We say therefore, that there is no proof, that Stout ever had any knowledge of the ~~plffs~~ Claim until 1891, after he had lived on the land and had it enclosed, claiming it as his own for more than 15 years.

But suppose he had here had notice? And sold to Baker, who had no notice, Baker would not be affected by the notice to Stout See 88 Va 1049 where the Court say "nothing is better settled than that a purchaser without notice, from a purchaser with notice is not affected by such notice"

When Baker purchased at a certain price, and entered into a written Contract to that effect his rights attached, and unless the plffs had given him notice before the trade and the vesting of his right, he can not complain that Baker went on and completed his Contract, he was bound to do so, and if



the plff has no right against him or the land in his possession he can not require the defendant Baker to aid him by entering into a controversy with Stent.

We submit, that when D. S. Litten sold & conveyed in 1878 this lot omitting the water right as they call it. R. E. Litten the plff had no right, by virtue of that deed to enter on or take water from lot no 4 no such right attached to his deed. D. S. Litten could not exercise such right because not being the owner or tenant of lot no 1 he could not enjoy the easement - so it thereby lapsed, and was abandoned with no land to receive the fruit, for all this time from 1878, to 1893 - 15 years Stent was upon the land had it enclosed claimed it as his own, without notice actual or constructive of the plff's claim -



Could there be a stranger case made out under the Statute of Limitations? Could there be a clearer holding without notice? The plffs Counsel was pleased in their oral argument ~~to~~ insinuate that Butler, Claimant, was an effort upon his part to, obtain an abatement of purchase money against Sturt and that this case was so plain that they derided our earnest.

If doubt and suspicion are arguments; we might reply that plff having held his deed to let no 1, without any claim under it to water; remaining for all that time a near neighbor to Sturt without ever notifying him that he was taking water not by permission which he had - which is proven by Sturt - and after all this to come in and make claim just one man is moving away & an after a stranger coming in to rise up and make such loud acclaim



after such long silence, looks a little like the pliff felt that in the confusion and change he might strengthen or confirm his more than doubtful claim. I do not assert this, but it would be as well borne out by the fact, as that, Baker was only ~~very~~ seeking to get rid of what they say is a bad bargain. Mr Baker seems quite satisfied. I regret my want of time, to pursue by further examinations these interesting questions, I believe my position to be tenable as follows

1 That Stent, nor Baker were not under any legal obligation to examine the report & proceedings of partition further than they may relate to lot No 4 - of this position I feel confident.

2 That the provision for water right is void for uncertainty - of this I am not so confident, but it is worthy of careful thought.



3 I feel, great Confidence in the position that the report or proceeding of the Jeremiah Scaggs estate is not by law required to be recorded, did not confer legal title and was not therefore constructive notice, or necessary to be examined as a monument of title.

4 The proof utterly fails to show that ever Stent knew before 1891 that the plff assert their taking of water as a right. The Bill alleges it the answer denies it and the proof is silent; the plff must therefore fail. This position is asserted with Confidence.

5 Baker is a purchaser without notice, and if Stent had notice it does not affect him this is clearly the law.



The Conveyance of D. S. Litten in 1878, without the so called water right, the long continuance in that State without any assertion is a clear Abandonment see Encyclopedic Vol. 1 Little Abandonment. And a conveyance in 1893 could not revive it. It is not such an incident as follows the land but must as it relates to an after tract be conveyed.

- 6 The whole case shows that less harm will result to the plff, by a denial of his claim than will accrue to the defendant by establishing it. The witnesses say Littens land would be damaged \$10 per acre \$200.00 The same witnesses say by granting the right Baker's Cut No 4 would be damaged \$500.00 A familiar principle of equity is it will by its aid do a greater injury that good, unless upon the plainest proof of conduct & the acts of the parties.



Baker

and Brief

Litter.

~~~~~

A more equitable mode therefore  
would be to give Baker the  
option to pay this \$200 or allow  
the right if the plff could at all  
succeed. The specific execution  
of Contract is always matter of  
sound judicial discretion. See  
Reynolds v. Necessary 88 Va. 125  
all of which is respectfully  
submitted.

A. L. Bridenbark



To Mr. Ira Baker,

TAKE NOTICE. That I on the 2<sup>d</sup> day of  
October, 1894, at the Law Office of B. H. Sewell,  
in the Town of Jourdsville Lee County Vir-  
ginia.

will proceed to take the depositions of Floyd Shuler, J. W. Rivers  
J. C. Flannery, D. S. Litton, A. D. Litton and others  
which, when taken, are intended to be read as evidence on my behalf in a certain suit in Equity  
now pending in the Circuit Court of Lee County, State of Virginia, in which

I am ———— plaintiff and  
You are ———— defendant .

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

This September 25<sup>th</sup>, 1894.

Very Respectfully,

B. E. Litton,  
By Counsel.



R. E. Sutton.

vs Notice

Ira Baker.

Executed Sept  
the 27-1894 by  
depositing a true  
office copy of  
the within  
Notice to Ira  
Baker.

This Sept 28-1894  
L. M. Wade D. S.  
for C. E. Flannery  
S. L. Co.



# The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*Ira Baster*

to appear at the Clerk's Office of the Circuit Court of the County of Lee, at the rules to be held for the said Court on the *3<sup>rd</sup>* Monday in *May*, 189*4*, to answer a bill in Chancery, exhibited against *him* in our said court by *R. E. Cotton*

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *16<sup>th</sup>* day of *May*, 189*4*, and in the *11<sup>8</sup>* year of the Commonwealth.

*A. B. Munsey*

Clerk.

*By S. V. F. Richmond D.C.*



The necessary affidavit and bond required by ~~injunction~~ order having been made and filed. The defendant Ira Baker, his servants, employees, and agents be and he and they are hereby enjoined and prohibited from threatening or in any way interfering with the said R. E. Littor or his servants of lot No 1 in the said bill mentioned, in the use and enjoyment of the water and water rights and privileges to the spring on lot No 4 mentioned in the said bill, and that the said Baker his agents, servants, employees, be and they are, hereby enjoined from loading the door of the house, which has been built over the said spring, until the further order of this Court.

R. E. Littor.

US. { SUBPENA  
IN CHANCERY.

Ira Baker.

D. S.

p. q.

To 2<sup>d</sup> May

Rules,

1894.  
Circuit Court.

Executed May, the  
18-1894 by J. L. Lanning  
a true office copy  
of the within same  
to Ira Baker this  
May the 19-1894  
L. E. Wade D. S. pro  
C. E. Lanning  
S. L. L.

5

May the 16. 1894  
Wm. T. M. Webb, your most friend  
sent the subpoena for Wm. Littor  
to Wm. T. M. Webb  
J. E. Lanning



Robert Litton

TAKE NOTICE, That \_\_\_\_\_ on the 3 day of

Nov. 1894 at The Law office of  
A. L. Pridemore in the town of Junes-  
ville Lee County Virginia I will  
will proceed to take the deposition of Wm L. Stout and others

which, when taken, are intended to be read as evidence on my behalf in a certain suit in Chancery  
now pending in the Circuit Court of Lee County, State of Virginia, in which  
you are plff plaintiff and  
I am defendant.

And if from any cause the same be not commenced, or if commenced, be not concluded on that day, the  
taking thereof will be adjourned from time to time, and from place to place, until completed.

Oct 29, 1894

Very Respectfully,

Sam Baker  
by Counsel



Virginia Lee County to wit  
This day Nathaniel Baker personally  
appeared before me and made oath  
that on the 31<sup>st</sup> day of October 1894, he  
delivered to Robert E. Litten a true copy  
of its within notice. Given under my  
hand this 5<sup>th</sup> day of Nov. 1894

Harvey Young N.P.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU TO SUMMON

*X* Floyd Shuler *X* J W Rivers and  
*X* J B Flanary

at the Law office of B H Sewell in the town of Jonesville Va  
to appear before the Judge of our ~~Circuit Court~~ of Lee County, at the court house thereof on the *2nd*  
day of *October* 1894, to testify and the truth to say in behalf of the Plaintiff

in a certain matter of controversy in our said Court,  
before the said Judge depending and undetermined between

*R. E. Litton*

Plaintiff

and

*Ira Baker*

Defendant :

And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house,

the *25th* day of *September* 1894, and in the *119th* year of  
the Commonwealth.

*A B Munsey* Clerk.



R. E. Litton

vs

SUBPENA  
FOR  
WITNESS.

Ira Baker

Circuit Court, the 2nd day of

October 1894

Executed by  
Surrender all the  
within wit-  
of this Subpoena  
this Sept 29 194  
L. M. Wade D. S.  
for R. E. Litton  
H. L. G.



Bill in  
Blancery  
Ira Baker et al.

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